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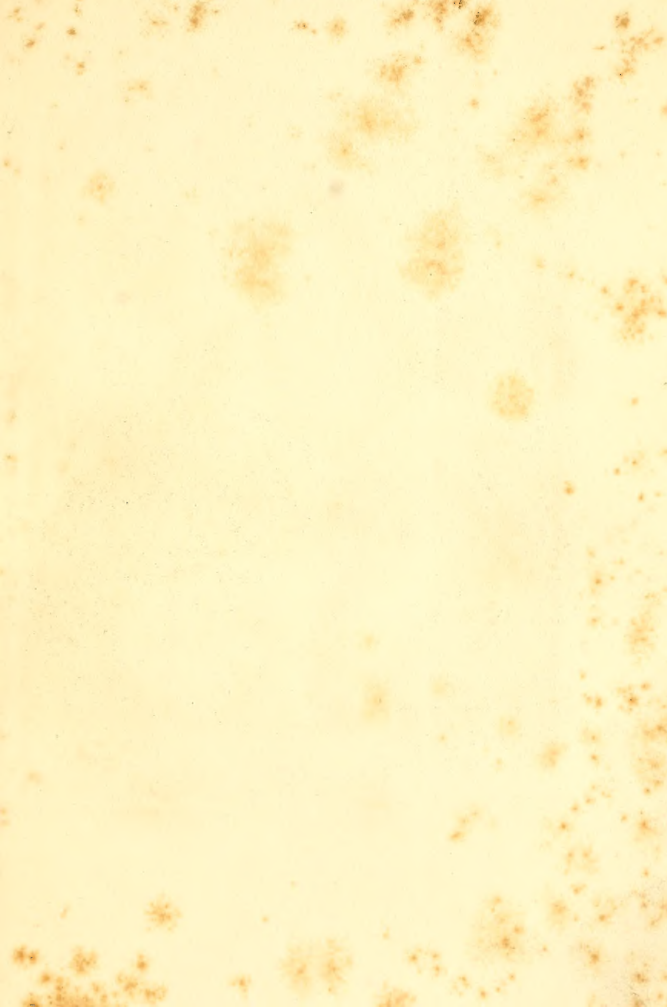
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THE
GREAT OYER OF POISONING:

THE TRIAL

OF THE

EARL OF SOMERSET

FOR THE POISONING

OF SIR THOMAS OVERBURY,

IN THE TOWER OF LONDON,

AND VARIOUS MATTERS CONNECTED THEREWITH,

FROM CONTEMPORARY MSS.

BY ANDREW AMOS, ESQ.

LATE MEMBER OF THE SUPREME COUNCIL OF INDIA.

I desire God that this precedent of Overbury may be an example and terror against this horrible crime, and, therefore, may be called *Great Oyer of Poisoning*.

SIR EDWARD COKE.

Thomas Overburie—O, O, a busie murther!

Anagram of the Times.

LONDON:

RICHARD BENTLEY, NEW BURLINGTON STREET,

Publisher in Ordinary to Her Majesty.

M.DCCC.XLVI.

Now Ready, in 8vo.

FOUR LECTURES on the ADVANTAGES of a CLASSICAL
as an AUXILIARY to a COMMERCIAL EDUCATION.

With a LETTER to DR. WHEWELL upon the Subject of his Tract on
Liberal Education.

BY ANDREW AMOS, ESQ.

LATE MEMBER OF THE SUPREME COUNCIL OF INDIA ;

RECORDER OF NOTTINGHAM, OXFORD, AND BANBURY ;

AUDITOR AND FELLOW OF TRINITY COLLEGE, CAMBRIDGE, ETC.

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THE GREAT OYER OF POISONING.

CHAPTER I.

PARTICULARS CONCERNING THE PERSONS WHOSE NAMES ARE CONSPICUOUS IN THE TRIALS NAMED, BY SIR EDWARD COKE, THE "GREAT OYER OF POISONING."

THE Masque of Hymen, that delightful relick of literature and manners in the days of King James the First, introduced to public notice a female of noble family, who became the heroine (if we may use this term in a bad sense) of the "Grand Oyer of Poisoning." This Masque was represented on the occasion of the marriage of the Earl of Essex with Lady Frances Howard. The Bridegroom was but fourteen years of age, the Bride was only thirteen. The elder of these *children* in after times commanded the Parliament's army at Edge Hill against the Cavaliers, headed by King Charles in person. The younger's career of guilty enjoyment, magnificence, crime, and degradation will appear in the transactions which are the subject of the following pages.

The altar of *Union*, with which the scene of the Masque opened, the typification of the classical Deity Hymen, “with saffron robe and taper clear,” the invocation to King James, who presided at the festivity, and who thereby evinced, as was intimated by the poet, his desire to unite hearts and hands as he had united kingdoms, are familiar to the admirers of that Prince of Masque-writers, Ben Jonson; at the call of whose genius there was wont, as he expressed it, to

Spring all the graces of the age,
And all the loves of time ;
With all the pleasures of the stage,
And relishes of rhyme :
Add all the softnesses of courts,
The looks, the laughter, and the sports ;
And mingle all their sweets and salts,
That none may say the triumph halts.

Masque of the Fortunate Isles.

On the present occasion, Jonson’s coadjutor for contriving the ingenious machinery of the Masque was the distinguished architect Inigo Jones. These two eminent characters had not yet quarrelled about the precedency of their names in print. An eye-witness passes a high eulogium on their mutual exertions. He speaks of a dance in the shape of the Bridegroom’s name ; he admires the white hern plumes worn by the maskers ; and says that all the jewels and ropes of pearls to be found in the West End or borrowed in the City were laid under contribution by the

Ladies of the Court, therein, as Jonson insinuates, betraying their motives prepenſe.

If not to mingle with the men,
 What do ye here? Go home again.
 Your dressings do confess,
 By what we see of curious parts,
 Of Pallas' and Arachne's arts,
 That you could mean no less.
 Why do you wear the silkworm's toils,
 Or glory in the shell-fish's spoils,
 Or strive to show the grains of ore
 That you have gather'd on the shore,
 Whereof to make a stock
 To graft the greener emerald on,
 Or any better watered stone,
 Or ruby of the rock?

Masque of Neptune's Triumph.

The poet contrived a device for the Masque of Hymen, which subsequent events might lead us to characterise as prophetic of the disturbance that the marriage union he was called upon to celebrate was destined to undergo. He introduced eight maskers of the principal nobility, who represented the *Perverse Affections*. They were splendidly attired and distinguished by several ensigns and colours, and they issued from a globe allegorically figuring a man, on which were exhibited countries gilded, with the sea heightened by silver waves; whilst the interior of the globe represented an illuminated mine of several metals. The maskers, or *Perverse Affections*, drew their swords, and offered to interrupt the marriage rites.

These intruders were quieted by a venerable female, who advanced from the top of the globe, as from the brain of man. This allegorical personage was *Reason*: her hair was white, trailing to her waist, her garments blue, with stars; her girdle covered with arithmetical figures: in one hand she bore a lamp, and in the other a bright sword.

But as Reason had been outraged by a ceremony in which neither Bride nor Bridegroom had attained the years pointed out by nature, and dictated by prudence, for contracting the marriage union, so no wedlock is recorded in English history that led to consequences in which morality, law, and religion were equally prostituted for the indulgence of guilty and impetuous passions.

About seven years had elapsed since the representation of the Masque of Hymen, when the attention of the people of England was fixed on a transaction in which the parties were the somewhat incongruous personages of a King, Bishops, Doctors of Civil Law, Matrons, and Midwives. The females of this junto were directed to examine whether the Countess of Essex (the Child-Bride of the Masque of Hymen) appeared to their eyes, when disrobed, to be still a virgin; whilst their royal, right reverend, and learned associates were to decide, according to the verdict of the matrons, whether the lady had shown any adequate cause for divorce. The *union-maker*,

King James, not only sanctioned the proceedings, but impatiently urged them on, and dictated their final conclusion. This was, in effect, that the supposed marriage, at which the King had presided, was adjudged to be no marriage at all, on the ground, that, although it could not be suggested that the Earl of Essex, now arrived at the age of twenty-one, was incapable of having children by other women, yet that the matrons discovered apparent cause for believing him incapable of having any by his own wife. A contemporary writer alleges, on the authority of the Chamberlain who presided at the door of this court of female inquisition, that Miss Mounson, daughter of Sir Thomas Mounson, was substituted for the Countess, and that, with her face thickly veiled, she eluded the detection of her identity, as she braved the searching investigation of her chastity.* If we suppose that the Countess of Essex was herself examined, her previous intrigues with Prince Henry, and the anecdote of her glove, which His Highness refused to pick up, because, he said, "it had been stretched by another," and her midnight interviews, arranged by Mrs. Turner, in *Paternoster-row*, which are detailed in the course of the Overbury trials, or are to be found in contemporary histories, give room

* Sir A. Weldon's "Court and Character of King James." Wilson, the intimate friend of Lord Essex, confirms this story. He says that "another young gentlewoman was fobbed in her place."

to suspect that the matrons, who were doubtless carefully selected for the nonce, came resolved not to cast the first stone, whatever revelations might meet their eyes.

We may not be surprised at means being resorted to for duping or suborning the matrons, when we read how the King prohibited the Judges of the Ecclesiastical Court from giving reasons for their opinions, and endeavoured to overawe the Archbishop of Canterbury by a singular argument *ad verecundiam*, couched in the following terms:—"I will conclude, therefore, that, if a Judge should have a prejudice in respect of persons, it should become you rather to have a *faith implicit* in my judgment, as well in respect of some skill I have in *divinity*, as also that I hope no honest man doubts of the uprightness of my conscience. And the best thankfulness that you, that are so far '*my creature*,' can use towards me, is to reverence and follow my judgment, and not to contradict it, except where you may demonstrate unto me that I am mistaken or wrong informed. And so farewell.—James R." The royal writer of this letter assumed the character of a divine and a jurist, and trampled on the independence of a high court of justice, whilst he was, in reality, demeaning himself as the pander to a flagrant act of adultery.

On the festival day of St. Stephen, in the year

1613, King James, the Queen, the Prince of Wales, the Heads of the Church, and the Peers and Peeresses of the realm, were assembled in the Chapel of the Royal Palace of Whitehall, to witness the marriage of the divorced Lady Essex with the King's Favourite, created, for the occasion, in order that his rank might correspond with that of his bride, Earl of Somerset. On that same day, in the same place, just eight years before, the King had given away the same bride to a husband whom he may be justly charged with having, in effect, himself divorced. The same King paid the expenses of the second wedding. The same Dean of the Chapel, a Bishop of Bath and Wells, performed both ceremonies.

The Bride, according to the language of a contemporary writer, was married "in her hair," that is to say, her hair (which was very beautiful and long) hanging down to her feet. To be married "in their hair" was the appropriate etiquette of that day for *virgin*-brides. The historian Wilson, from being the companion of the Earl of Essex in his campaigns, and the constant inmate of his house, may be supposed to have expressed himself on this occasion according to the views and feelings of his much-injured friend. He writes of the Countess of Somerset, that those "who saw her face might challenge Nature of too much hypocrisy for harbouring so wicked a heart under so sweet and bewitching

a countenance." He adds, "that she had grown to be a beauty of the greatest magnitude in the horizon of the Court, and every tongue grew an orator at that shrine."

It was in an Eclogue, written on the day of this marriage, in answer to a friend who reproached the poet for his absence on an occasion of so much festivity, that Donne wrote those lines which Dr. Johnson designates as "the poetical propagation of light," and which he adduces as one of the most striking examples of the conceits to be found in the works of the poets belonging to what Dryden calls "the metaphysical school," of which Donne and Cowley were the leaders.

" Then from those wombs of stars, the Bride's bright eyes,
At every glance a constellation flies,
And sows the Court with stars, and doth prevent,
In light and power, the all-eyed firmament.
First, her eyes kindle other ladies' eyes,
Then from those beams their jewels' lustre rise ;
And from their jewels torches do take fire ;
And all is warmth, and light, and good desire."

Donne is more distinguished as a divine than as a poet ; he was Dean of St. Paul's, and, according to his epitaph, written by himself, he took orders after the age of forty, as he says, by the impulse of the Holy Ghost *and* by the suggestion of King James. That no qualms of religion or morality influenced his language as a courtier on the occasion of the marriage of the

Earl and Countess of Somerset, appears from his compliments to the Bride upon her masculine effrontery under circumstances at which female modesty revolts.

“If by that *manly courage* she be tried,
Which *scorns unjust opinion*, then the Bride
Becomes a man.”

Wilson observes of the Earl of Somerset, that he had a “comely personage, mixed with a handsome and courtly garb, which he had been practising in France.” The Earl of Somerset, according to the description of Lord Thomas Howard, written shortly before the marriage, was “straight-limbed, well-favoured, strong-shouldered, and smooth-faced, with some sort of show of modesty. He was so particular in his dress to please the King, that he had changed his tailors and tire-men many times. And he was so decidedly the Court Favourite, that the King would lean on his arm, pinch his cheek, smooth his ruffled garment, and, when directing discourse to others, nevertheless gaze on him.” The King taught him Latin every morning. Lord Howard, in mentioning these facts to Harrington, then a young courtier in whose advancement he was interested, adds, that, in order to rise in favour with King James, it might answer to tell his Majesty “that the stars were bright jewels fit for Carr’s ears.”

The various ceremonies and little sorceries incident to marriages at Court were doubtless ob-

served on this occasion ; and if the details had been preserved, we should have found that King James had strenuously exerted himself in flinging the Bride's left stocking, sewing her up in the sheets, quaffing sack posset, drawing through the wedding-ring, playing a *reveille matin*, if he did not also, as he did in compliment to Sir T. Herbert and his lady, visit the newly-married pair before they rose from their bed. We are told by an eye-witness, that the King and Queen, at the Earl of Somerset's marriage, tasted hypocras* and wafers in the Chapel with the Bride and Bridegroom, and that gloves were liberally distributed, and, in particular, that "a very fair" pair of gloves, *worth* 3*l.*, was given to Secretary Winwood, whose wedding-dress, consisting of a doublet hose and cloak all black, cost fourscore pounds.

A nuptial sermon was preached by the Dean of Westminster ; and one of his hearers tells us, what we might have conjectured, that, like another "soft Dean" who "never mentioned Hell to ears polite," the gist of the discourse was the commendation, to use the writer's own words, "of the young couple, glancing also at the praise of

* See "Strutt's Manners and Customs," vol. iii. p. 74, for the "Crafte to make Hypocras ;" Brand's "Popular Antiquities," vol. ii. p. 65, for the benediction on the hypocras. In Shakspeare's "Taming of the Shrew," Petruchio, after quaffing the muscadel at his marriage, throws the sops in the sexton's face.

the Bride's mother, whom he styled the *mother-vine*.* Donne, in reference to Cupid's conquest over the Favourite, writes—

“ Our little Cupid hath sued livery,
And is no more in his minority ;
He is admitted now into that breast,
Where the King's counsels and his secrets rest.”

Though the marriage was celebrated on a *Sunday*, in the evening there was a “gallant Masque of Lords.” On comparing the lists of the noble dancers, it will be found that four out of twelve maskers had danced in the Masque of Hymen at the former wedding. The Masque of the second wedding is still extant ; it was composed by one Campion, who also wrote the Masque for the marriage of the Palgrave with Princess Elizabeth. This successful rival of Ben Jonson is now less read or known than even Lilly, Davenant, Shadwell, or Cibber, who pleased Sovereigns better, and were more munificently patronized by them, than their respective contemporaries Shakspeare, Milton, Dryden, and Pope.

It has been represented, by Gifford, that Ben Jonson's virtuous indignation recoiled at writing a Masque for the Countess of Somerset's second marriage. But there seems no doubt that Jonson's Challenge at Tilt and his Irish Masque were written for that occasion, though they had not the honour

* A collection of “Wedding Sermons” was published, Lond. 1732.

to be represented on the wedding night. The "Challenge at Tilt" was exhibited the day after the marriage. The Irish Masque contains intrinsic evidence, which is conclusive, as to the occasion upon which it was written.

Den. And pleash, ty graish, I will tell tee, tere vash a great newesh in Ireland of a great brideal of one o' ty lords.

Pat. Ty man Robyne, tey shay.

Den. Marry ty man Toumaish his daughter, tey shay.

Der. Ay, ty good man, Toumaish o' Shuffolke.

Ben Jonson deemed it prudent, in the collection of his works published by him after the downfall of the Earl of Somerset, to designate the "Challenge at Tilt" and the "Irish Masque" as having been respectively presented at a marriage. For the same reason the Masque of Hymen is described, in the same collection, as having been performed at a marriage; though in the previous edition of this Masque, published soon after it was composed, the names of the bride and bridegroom were mentioned in the title-page.

Lord Bacon, who, in his Essays, has thought that the preparation of Masques was a subject worthy of his pen, presented the Earl of Somerset and his Lady with a Masque, which was performed eleven days after their marriage. The King and Queen honoured the representation with their presence. It was called the "Masque of Flowers." The maskers were the members of the learned society of Gray's Inn, who were metamorphosed into hyacinths,

jonquils, and other flowers. It is related that the Solicitor-General Yelverton was desirous of contributing to the expense of this Masque, which amounted to 2000*l.*; but that Bacon, from an ambition of ingratiating himself with the Favourite, would not admit of any co-rival in his sycophancy and extravagance. The Masque was concluded with a tribute of respect and zeal to the Bride and Bridegroom.

“ Receive our flowers with gracious hand,
As a small wreath to your garland.
Flowers of honour, flowers of beauty,
Are your own : we only bring
Flowers of affection, flowers of duty.”

Donne, in writing of the entertainments provided to celebrate the Earl of Somerset's marriage, says—

“ The tables groan as though the feast,
Would, as the flood, destroy all fowl and beast.”

And, by way of curious illustration of the current controversy regarding the truth of the Copernican system, which, at that time, Bacon disbelieved, and, much later, Milton doubted, he writes that Copernicus was borne out in his opinions by the general *movement* of men and things in honour of the Earl and Countess of Somerset.

The Earl and Countess of Somerset were entertained by the Lord Mayor and Aldermen of London, nine days after their marriage, at Merchant Tailor's Hall. There was a grand procession of equipages

by torch-light, through Cheapside. At the entry of the Bride and Bridegroom into the Hall, they were greeted with music and a congratulatory speech. At the feast they were served by the most comely of the citizens, selected out of the twelve companies, who wore their "gowns and rich foins." In the evening there was "a Wassaille," two Masques, and a Play. Nor did the Bride and Bridegroom return to St. James's till three o'clock the next morning.

The Countess of Somerset being desirous of going to the City festival in great state, applied to Sir R. Winwood for the use of four of his horses to draw her carriage which were the handsomest in London. He answered her Ladyship, that it was not fit for so great a Lady to use any thing borrowed, and therefore begged her husband to accept his horses as a present.

The Corporation of London, the East India Company, the Merchant Adventurers, the Farmers of the customs vied with each other in the costliness of their marriage offerings. The Queen gave silver dishes curiously enamelled. Sir E. Coke, the Chief Justice, presented a basin and cover of silver gilt; his Lady a pot of gold. Another sycophant gave a gold warming-pan; another hangings, worth 1500*l.*; another a sword worth 500*l.*, besides its workmanship of enamelled gold, which cost 100 marks; another a cradle of silver to burn sea-coal; another candlesticks worth 1000 marks; another

two oriental pearls; another a fire-shovel, tongs, pokers, creepers, and other chimney furniture, all of silver. The wife of a Bishop presented the bride-cake.

Somewhat less than three years had elapsed after this gorgeous display of wedding gifts and entertainments, when, on the 24th and 25th of May, in the year 1616, a still more imposing spectacle occurred, in which the principal actors in the former scenes again engrossed the eyes and ears of the public. On the first of these days the Countess of Somerset, and on the second the Earl of Somerset, held up their hands in Westminster Hall, where all the nobles and courtiers of the realm, and a multitude of more humble bystanders, perhaps the very individuals who had formerly echoed their praises, or joined chorus in their epithalamiums, were now assembled to hear them answer upon their arraignments for the crime of murder.

All places of public business and amusement were deserted during these proceedings*, so intense was the curiosity thus excited. Ordinary courts of law presented the appearance of the Long Vacation. One contemporary letter-writer mentions that at the Earl's trial "a world of people were as spectators;" another contemporary letter-writer relates

* This is related by Sir F. Bacon, who says, "The term hath been almost turned into a *justitium*, or vacancy; the people themselves being more willing to be lookers-on in this business, than to follow their own."

that "four or five pieces was an ordinary price for a seat in the Hall." He "knew a lawyer who had agreed to give 10*l*. for himself and family for the two days;" and "fifty pounds were given for a corner that would hardly contain a dozen." The writer himself got a place for ten shillings at the Earl's trial, and, in order to secure it, went to Westminster Hall at six o'clock in the morning, the trial commencing at nine. His seat was probably incommodious in proportion to its cheapness, for he was obliged to leave it before the trial was over, in consequence of the heat, and fainting from fasting.

The interest of the trials was increased by feelings of a superstitious nature; for at a previous arraignment of Mrs. Turner, whom the Countess calls in a letter "sweet Turner," some mysterious articles were introduced which had been seized in the study of a noted Astrologer, Dr. Forman. This Magician is called by the Countess, in a letter, "Dear Father," and she subscribes herself "Your affectionate Daughter." He supplied her with philters to chill the love of Lord Essex for her, and to kindle that of the Earl of Somerset. The articles consisted of enchanted papers and puppets, a piece of human skin, and a black scarf full of white crosses. A roll of Devils' names had been produced at Mrs. Turner's trial just before a crash was heard from one of the scaffolds, which were erected round the Hall: this sudden noise, we are

told, caused "great fear, tumult, and confusion among all the spectators, every one fearing as if the Devil had been present, and was grown angry to have his workmanship shewed by such as were not his scholars." Dr. Forman had also a book, which had been produced in Court at a former trial, when Sir E. Coke would not suffer it to be read; for which the scandal of the day supplied a motive,—that he found the name of his own wife registered in it.

Lord Chancellor Ellesmere officiated as Lord High Steward; he sat under a "Cloth of Estate," at the upper end of the Hall. Nearest to him stood an Usher bearing a white rod, the insignia of his office; a little farther off were Garter King at Arms, and the Seal-bearer, who were on his right hand; and the bearer of the Black Rod on his left. Eight Serjeants at Arms were placed on each side, more behind. On either side of the High Steward, on benches somewhat lower than his raised seat, placed in a gallery raised from the floor by twelve steps, sat the twenty-one Peers who were summoned to constitute the Lord High Steward's Court. The Judges, dressed in their scarlet robes and collars of S. S., sat in a row somewhat lower than the Peers. Foremost among them was Sir E. Coke, whose name is still the most eminent of all names of lawyers that are repeated in Westminster Hall. At the lower end of the Hall sat the King's Counsel, headed by an Attorney-General, the most

distinguished of all who have ever held that office, the great Sir Francis Bacon.*

The prisoners, at their respective trials, stood beyond the lawyers, and separated from them by a *bar*, in a place where every eye could behold the indications of inward emotion, evinced by expressions of countenance or changes of demeanour. A Gentleman Porter holding an axe stands before a Peer or Peeress under trial. The edge of the axe is turned from the prisoners ; but if sentence of death be pronounced, it is then immediately turned towards them. The Countess of Somerset, on her taking her place, "made three reverences to his Grace and the Peers." Writers, to whom every minute particular of these trials seems to have been matter of the deepest interest, relate that she was dressed "in black tammell, a cypress chaperon, a cobweb lawn *ruff* and cuffs." The Lord High Steward having explained the object of the proceedings, the Clerk of the Crown said, "Frances Countess of Somerset hold up your hand."† She

* In the 15th vol. of Howell's St. Tr. p. 771, will be found the ceremonial of a trial before the Lord High Steward, composed by Mr. King, Lancaster Herald. It is very minute in details ; as, for example, it mentions that the *white staff* is to be eight or nine feet long, and that the Lord High Steward is to come to the Hall in a coach with six horses, and is to sit on the head seat by himself. There are, however, various particulars in several of the ancient state trials which are not noticed in the programme of this herald.

† When Lord Essex was called upon to hold up his hand, he exclaimed, he had "often held up his right hand before that

did so, and continued holding it up till the Lieutenant of the Tower told her to put it down. The indictment was then read. Whilst it was reading, the Countess stood looking pale,—she trembled, and shed some tears. At the part of the indictment where the name of Weston, the actual perpetrator of the murder of Sir T. Overbury, was first mentioned, she put her fan before her face, and there held it covering her face till the reading of the indictment was concluded. The Clerk of the Crown then asked her, “Frances Countess of Somerset, art thou guilty of the felony and murder, or not guilty?” The Countess, making an obeisance to the Lord High Steward, answered “Guilty,” “with a low voice, but wonderful fearful.” Sir Francis Bacon next delivered an address to the Lord High Steward, in which he panegyricized the King, gave some account of the discovery of the plot by which Sir T. Overbury had been poisoned, and held out a plain intimation of pardon to the Countess, by citing the expression, that “mercy and truth be met together.” The King’s instructions for the investigation of Sir T. Overbury’s murder were then read. After which Sir E. Coke extolled the King’s sagacity, observing that the instructions that had been

time, at her Majesty’s command, for a better purpose.” The object of holding up the hand was originally to distinguish different prisoners, when several were arraigned together. It was held, in Lord Stafford’s case, that the ceremony is not essential to the validity of a trial.

read "deserved to be written in a sunbeam." The Clerk of the Crown then demanded of the Prisoner, "if she had any cause to allege why sentence of death should not be pronounced on her?" She answered, "I can much aggravate, but cannot extenuate my fault: I desire mercy, and that the Lords will intercede for me to the King." This she spoke "so low, humbly, and fearfully," that Sir Francis Bacon, who, as we have noticed, sat near her, was obliged to repeat the words to the Lord High Steward. An officer of the Court upon his knee delivered to the Lord High Steward the white staff. Sentence of death was then passed, but in passing it the Lord High Steward told the Countess of Somerset, "Since the Lords have heard with what humility and grief you have confessed the fact, I do not doubt they will signify so much to the King, and mediate for his grace towards you."

An eye-witness observes, that the Countess, upon her arraignment, "won pity by her sober demeanor, which, in my opinion, was more curious and confident, than was fit for a lady in such distress, and yet she shed, or made show of, some tears divers times." Another eye-witness writes, "The Countess, after sentence given, in a most humble, yet not base manner, besought the Lord High Steward, to whom she first directed her speech, (and then likewise to the rest of the Lords,) that they would be pleased to mediate his Majesty on her behalf for his gracious favor and mercy, which they promised to do; and

then, expressing her inward sorrow by the many tears she shed, departed." Camden, in his *jeune Annals*, records the universal commiseration of the spectators. In those times, as on various occasions at the present day, and probably as long as human nature endures, the sympathies of mankind for a spectacle of suffering humanity, (especially in the instance of a lovely woman overwhelmed by contrition and fear of death,) immediately presented to the eyes, outweighed in strength the sentiments of justice, and effaced the recollection of a crime marked by extraordinary malice and cruelty.

Lord Essex, the former husband of the Countess, was present at her trial, but seemed purposely to keep out of public observation and the sight of the wife of his infancy.

On the next day, that trial took place the illustration of which is the principal object of these pages. The Earl of Somerset appeared at the Bar in the cloak, and George, and other insignia of the order of the Garter. He was not neglectful of that attention to dress, by which his early fortunes had been so much advanced. It is stated that he was apparelled "in a black satin suit, laid with two white laces in a seam; a gown of orient velvet, lined with unshorn: all the sleeves laid with satin lace; a pair of gloves with satin tops; his hair curled." It was observed that his "visage was pale, his beard long, his eyes sunk in his head." The Earl's trial lasted from nine in the morning till ten at night. Towards the

concluding part of the trial, the dramatic effect of the scene was increased by a multitude of torches casting a glimmering light through the high and vaulted roofs of the Hall, and making transiently visible the countenances of the Judges, the Counsellors, the Peers, Peeresses, and the mixed audience that crowded the lofty scaffoldings. It was at this period that the Earl of Somerset commenced his defence. On various great occasions he had been set up as the idol to be admired of all eyes,—he was still wearing the ensigns of the highest order of knighthood ; but he was now pleading for his life. He had to exculpate himself from a charge of deep and mysterious malignity. His own wife had confessed her guilt. It was supposed, by some, that he would be overwhelmed by the consciousness of crime, or the sense of shame. It was doubted whether he had abilities to make any impression on a public assembly. Suspicions were abroad, that, in a moment of despair, he would make revelations which would cause the King to tremble on his throne. Repeated attempts were made, during the trial, by the Lord High Steward, to shake his firmness, and divert him from vindicating his innocence, by plainly telling him that his life would be spared or not, according as he made a confession, or demanded a verdict. Nevertheless, as an eye-witness observes, “ A thing worthy of note in him was his constancy and undaunted carriage in all the time of his arraignment, which, as it began, so it did con-

tinue to the end without any change or alteration." Amidst the mixed expectations of the audience, the Earl of Somerset began a speech, in which he displayed a resolution of demeanour, and a flow of natural eloquence, that might have become a suffering patriot. We know that among many of the bystanders he produced an impression of his innocence. His address will be given much more fully in the present work, from a document in the State Paper Office, than according to any report of it hitherto published. Other orations have been spoken in the storied Hall of Westminster, with the eloquence of which the Earl's speech will not admit for a moment of being compared; but the assemblies which have filled its spacious fabric, from its area to its roof, were not, perhaps, moved with more thrilling excitement, even by the voice of Strafford, or Burke, or Sheridan, than by the Earl of Somerset pleading for his life.

The details of the Earl of Somerset's trial will be the subject of particular examination in the subsequent chapters of this work. But in this place it may be allowed to give room to the reflections that arise upon a view of the remarkable scenes in which we have observed the Earl and Countess of Somerset to have performed such a conspicuous part. It is a singular train of occurrences in the domestic history of England, that the same King should have given away a noble lady at her first marriage, and shared with her the homage of her nuptial masque;

should have afterwards, by the abuse of his learning, and licentious exercise of his prerogative, accomplished her divorce; should have presided at her second marriage, loaded her second husband with honour and riches and power, and afterwards have penned instructions, covering as we are told by Sir E. Coke, two sheets of paper on both sides, for conducting their trial for their lives. Nor, as it will be seen in the sequel of this work, does the King's singular connexion with the history of the Earl and Countess of Somerset end with their trials.

It is also a very striking circumstance, that the Countess of Somerset should have been receiving the homage of the most noble, the wealthiest, and the wisest persons of the land; that the lawyers and citizens should have been vying in entertaining her with festive amusements; that the most distinguished poets of the day, in their eagerness to extol her, should have been exhausting the conceits of immoderate hyperbole; that a Dignitary of the Church should have been preaching at her wedding a sermon replete with incense to her vanity, and, probably, excitement to her lust; whilst, at the very time she appeared to be regaling deliciously on flatteries, an inward monitor was striking at her heart, with the fearful memento of a most cruel murder committed by her scarcely three months before, and was agonizing her with the "rooted sorrows" of a mind such as our immortal Poet has depicted that of the blood-stained Lady Macbeth.

The Countess of Somerset must have been conscious that Sir R. Winwood's handsome horses drawing her decorated carriage, the low-browed and obsequious obeisances of men so admired as Sir E. Coke and Sir F. Bacon, begging her to deign to accept the glittering presents they presented with their own hands,—her high and canopied “state” at Merchant Tailor's Hall or Gray's Inn,—only drew around her a splendid veil of deception, which hid from the eyes of mankind the foul character of a murderess. What the suspended sword was to Damocles, and the handwriting on the wall to Belshazzar, an imaginary axe, with its edge turned towards her, must, to her mind's eye, ever have been visible, amidst the grandeur and brilliancy of festivals, in which all other persons were intent only on her own beauty and adornments, as on the Cynosure which the Court and the City seemed never satiated in beholding.

Whilst presented with congratulatory and encomiastic speeches, poetry, and music, the Countess of Somerset must have felt as though she saw in those who enriched her with presents, and incensed her with flattery, her future accusers and judges. So, indeed, it happened. The match-making King framed and penned *sun-beam* interrogatories for her examination in the Tower, and for her trial in Westminster Hall. The Queen, forgetful of her enamelled dishes, prevented, it is said, the Great Seal from being affixed to a pardon for the Earl of

Somerset, which the King had signed. The Dean of Westminster, the preacher of the marriage sermon, or pulpit epithalamium, laying aside his metaphors of vines and grapes, was appointed the private gaoler of the Earl of Somerset upon his first arrest, and kept him in custody for fifteen days. Sir E. Coke, the donor of the basin and ewer, outshone his former reputation for industry, by collecting upwards of *three hundred* examinations, out of which a choice might be made, for convicting the Earl and Countess, both of whom he pronounced guilty from his judgment-seat before they were tried. Sir R. Winwood, the gallant presenter of the team of non-pareil horses, was, according to most accounts, the person who first denounced the Earl and Countess of Somerset to the King. Lord Bacon, the exhibitor of the "Masque of Flowers," exchanged his "flowers of affection and duty," for those of invective and obloquy, in expatiating to the Peers on their guilt, and exhausted his ingenuity in methodizing "the links of the chain" and the "points of the compass," and in adjusting "the double and reflex lights," by which he undertook to expose their dark machinations. The marriage which Sir F. Bacon and Sir E. Coke had vied in celebrating, they afterwards contended which should stigmatize in the most vituperative language. An imputed connexion between adultery and murder, with the apposite example of David and Bathsheba, were the topics in the mouths of those great men which were substituted for

their former gratulatory presents of gold and silver, for hymenials and epithalamiums.

It is related that the Countess of Somerset passionately entreated the Lieutenant of the Tower, that she might not be imprisoned in the same room in which Sir Thomas Overbury had died. She deprecated, in the sad vicissitude of a barred and solitary prison for brilliant and festive halls and the courtesies of crowds, the infliction of one additional horror, that arising from the strength which the visions of the imagination derive, when aided by the presence of those places with which they are associated. No wonder, if, in the chamber of the murdered one, in total solitude, and in the darkness of midnight, the murderess should be appalled with the apprehension of being visited by the spectre of her victim.

The Countess of Somerset has, however, a claim on general interest, which may somewhat mitigate the feeling of horror that the mention of her name inspires. For her only child, born in the Tower during her imprisonment, and named Anne, after the name of the Queen, in the hopes thereby of propitiating her Majesty, was afterwards married to the Duke of Bedford, and was the mother of William Lord Russell;—who, if his grandmother was undeservedly reprieved from the scaffold, preserved, by his example on that fatal stage, the national spirit which was thereby enabled in the end to triumph and do justice to his memory. In the State Paper Office there is a document in which is related

something that was said concerning the mother of the patriot-martyr whilst in the womb. It may be thought to express a feeling of maternal tenderness, as though the preservation of her offspring was dear to a mother, whilst she abandoned all concern for her own life.

17^o Nov : 1615.

The Countess of Somerset laying her hand on her belly said, if I were rid of this burden, it is my death that is looked for, and my death they shall have.

W. SMITHE.*

In the foregoing observations, it has been endeavoured to avoid anticipating any judgment that may be formed concerning the guilt or innocence of the Earl of Somerset, a subject which will be amply discussed in the sequel of this work. Having introduced that nobleman to the reader's notice upon the celebration of his marriage, and as he afterwards stood in Westminster Hall before his Peers, it remains only to add, in this place, a few circumstances that occurred shortly before the latter event, in order the better to understand the feelings of himself and of his Judges upon that memorable occasion.

Historians relate numerous proofs of the extent of the Earl of Somerset's influence with King James, and of the height of prosperity to which he was raised. The records of the State Paper Office

* State Paper Office ; Domestic Papers, 1615, Nov. 17, No. 296.

supply a variety of particulars to the same effect. For instance, on one occasion, a Bishop of Durham petitions, that, inasmuch as the Favourite had received a commission of Lieutenancy over his diocese, it might be signified that the appointment was not made in consequence of any default or neglect on his part. Almost on the eve of the Earl's arrest, we find the petition of a jeweller made to him for permission to have the workmanship of a vase of gold worth 600*l.*, which was a present from the East India Company. But of all Somerset's acquisitions, the possession of Sherborne Castle, the forfeited estate of Raleigh, was the most prejudicial to him on his trial, owing to the adverse sentiments it inspired. James's unfeeling reply to Lady Raleigh's supplications for the restoration of the estate to her children, "I mun have it for Carr," cannot be read of in the present day without indignation; what impressions must it have produced on the contemporaries of Raleigh and Carr! Many persons looked upon Somerset's sufferings as a just retribution of Providence for a cruel injury to one of the conquerors of the Armada, the last surviving favourite of Queen Elizabeth, the bosom friend of the lamented Prince Henry, the historian of the world, one who, in literature and in enterprize, stands to this day in the foremost rank of English *Worthies*.

About three months before his arrest the Earl of Somerset was created Lord Chamberlain. The King

on this occasion declared, that, "for as much as the place of Chamberlain is one of great nearness to our person, we have therefore made desire of one thereto whom of all men living we most cherish;" and then, as a contemporary writer relates, "addressing himself to the Favourite with the most amicable compellation that might be, he used these words: 'Lo, here friend Somerset,' and thus presented him with his staff of office." This appointment, and the custody of the Privy Seal, were the ostensible public functions enjoyed by the Earl of Somerset at the time of his fall.

An Archbishop has informed us of the particulars of the Bed-chamber intrigues, in which his Grace was the principal mover, and whereby a party in the Court, that was hostile to the Earl of Somerset, became powerful. Archbishop Abbot, in a personal memoir,* writes: "King James, for many insolencies, grew weary of Somerset, and the kingdom groaned under the triumvirate of Northampton, Suffolk, and Somerset, and was glad to get rid of him. We could have no way so good to effectuate that which was the common desire, as to bring in another in his room; one nail, as the proverb is, being to be driven out by another. It was now observed that the King began to cast his eye upon George Villiers, who was then Cup-bearer, and seemed a modest and courteous youth. But King

* Rushworth's Historical Collections, vol. i. p. 456., 3 Charles I.

James had a fashion, that he would never admit any to nearness about himself, but such a one as the Queen should commend to him, and make some suit in that behalf; in order, that, if the Queen afterwards, being ill-intreated, should complain of this *Dear One*, he might make his answer, ‘It is come of yourself, for you were the party that commended him unto me.’ Our old Master took delight in things of this nature. King James, in the meantime, more and more loathed Somerset, and did not much conceal it that his affection increased towards the other.” After a series of importunities, which the Archbishop details, the Queen made suit to the King that Villiers should be appointed a Gentleman of the Chamber. The King, nothing loth, complied. Somerset remonstrated, that the new favourite should first be appointed Groom of the Chamber; notwithstanding which obstacle, Villiers was sworn in as Gentleman and not as Groom, and was Knighted on the occasion. The swearing in and Knighting took place in its most congenial locality, the Queen’s bed-chamber.

The alienation of the King’s affections from Somerset, and the ascendancy of Villiers, are very necessary to be borne in mind throughout the legal proceedings which are the subject of subsequent chapters of this work, from the first collection of the evidence to the verdict of the Peers. Of the influence of a reigning Favourite in directing and

stimulating the exertions of men of the most gifted intellects, we have ample proofs in Lord Bacon's letters. There can be as little doubt, on the one hand, that Villiers was most anxious that the Earl of Somerset should be irrevocably excluded from the Royal favour, as, on the other, that the success of Bacon's promotion to the Chancellorship very much depended on the good word of Villiers. A letter written by Lord Bacon, and dated the 15th of February, 1615, whilst Somerset was in the Tower awaiting his trial, is indorsed, "A letter to Sir G. Villiers, touching a message brought to him by Mr. Thute, of a promise of the Chancellor's place." The letter is in these terms:—

TO SIR GEORGE VILLIERS.

SIR,

The message which I received from you by Mr. Thute, hath bred in me such belief and confidence, as I will now wholly rely on your excellent and happy self. When persons of greatness and quality begin speech with me of the matter, and offer me their good offices, I can but answer them civilly. But these things are but toys. I am yours, surer to you than my own life. For, as they speak of the turquoise stone in a ring, I will break into twenty pieces, before you have the least fall. God keep you ever!

Your truest Servant,

FRANCIS BACON.

P.S.—My Lord Chancellor is prettily amended. I was with him yesterday for half an hour. *We both wept*, which I do not do often.

Of the King's final parting with Somerset, we

have two accounts written by persons professing to have peculiar means of accurate information. The difference of circumstances in their narratives affords interesting matter for reflection on the nature of historical testimony.*

Roger Coke, who wrote the "*Detection of the Court and State of England*," published in 1696, was the grandson of Sir E. Coke, by his fourth son, through whom the present title to the Holkham property is derived. The author died at the age of seventy-seven, and lived during the latter part of his life within the rules of the Fleet Prison. In relating the particulars of the Earl of Somerset's arrest, he writes, "I speak this with confidence, because I had it from one of Sir Edward's sons." He states that the King was at Royston on a royal progress, and Somerset was with him; and when "the King had been there about a week, next day he designed to proceed to Newmarket, and Somerset to return to London, when Sir Ralph (Winwood) came to Royston, and acquainted the King with what he had discovered about Sir Thomas Overbury's murder. The King was so surprised herewith, that he posted away a messenger to Sir Edward Coke, to apprehend the Earl: I speak this with confidence, because I had it from one of Sir Edward's sons.

* Later historians adopt sometimes one, and sometimes the other narrative, and sometimes both. The authenticity of the statements is canvassed in the notes to "the Biographia Britannica," art. Coke.

“Sir Edward lay then at the Temple, and measured out his time at regular hours, two whereof were to go to bed at nine o’clock, and in the morning to rise at three. At this time Sir Edward’s son, and some others, were in Sir Edward’s lodging, but not in bed, when the messenger, about one in the morning, knocked at the door, where the son met him, and knew him: says he, ‘I come from the King, and must immediately speak with your father.’ ‘If you come from ten Kings,’ he answered, ‘you shall not; for I know my father’s disposition to be such, that if he be disturbed in his sleep, he will not be fit for any business; but if you will do as we do, you shall be welcome; and about two hours hence my father will rise, and you then may do as you please:’ to which he assented.

“At three Sir Edward rung a little bell, to give notice to his servant to come to him: and then the messenger went to him and gave him the King’s letter; and Sir Edward immediately made a warrant to apprehend Somerset, and sent to the King that he would wait upon him that day.

“The messenger went back post to Royston, and arrived there about ten in the morning. The King had a loathsome way of lolling his arms about his Favourites’ necks, and kissing them; and in this posture the messenger found the King with Somerset, saying, ‘When shall I see thee again?’ Somerset then designing for London, when he was arrested by Sir Edward’s warrant. Somerset exclaimed, that

never such an affront was offered to a Peer of England in the presence of the King. ‘Nay man,’ said the King, ‘if Coke sends for me I must go;’ and when he was gone, ‘Now the Deel go with thee,’ said the King, ‘for I will never see thy face any more.’

“About three in the afternoon the Chief Justice came to Royston; and so soon as he had seen the King, the King told him that he was acquainted with the most wicked murder by Somerset and his wife that was ever perpetrated, upon Sir Thomas Overbury; and that they had made him a pimp, to carry on their bawdry and murder; and therefore commanded the Chief Justice, with all the scrutiny possible, to search into the bottom of the conspiracy, and to spare no man, how great soever; concluding, ‘God’s curse be upon you and yours, if you spare any of them! and God’s curse be upon me and mine, if I pardon any one of them!’”

Sir Anthony Weldon published his “Court and Character of King James” in the year 1651. His father had been clerk of the royal Kitchen; himself was Clerk of the Board of Green Cloth. In allusion to his father’s origin, a work written expressly to impugn his Memoirs was termed “*Aulicus Coquinariæ*.” Weldon furnishes testimony as to the King’s parting with the Earl of Somerset, for which he vouches his own eyesight. He writes:—

To Windsor doth the King return to end his progress ;

from thence to Hampton-Court, then to White-Hall, and shortly after to Royston, to begin his winter journey.

The day the King went from White-Hall to Theobalds, and so to Royston, the King sent for all the judges, (his lords and servants encircling him,) where, kneeling down in the midst of them, he used these very words :

“ My Lords, the Judges, it is lately come to my hearing, that you have now in examination a business of poysoning. Lord, in what a most miserable condition shall this kingdom be, (the only famous nation for hospitality in the world,) if our tables should become such a snare, as none could eat without danger of life, and that Italian custome should be introduced amongst us ! Therefore, my Lords, I charge you, as you will answer it at that great and dreadful day of judgement, that you examine it strictly without favor, affection, or partiality ; and if you shall spare any guilty of this crime, Gods curse light on you and your posterity : and if I spare any that are found guilty, Gods curse light on me and my posterity, for ever ! ”

The King with this took his farewell for a time of London, and was accompanied with Somerset to Royston, where no sooner he brought him, but the Earl instantly took his leave, little imagining what viper lay among the herbs. Nor must I forget to let you know how perfect the King was in the art of dissimulation, or, to give it his own phrase, King-craft. The Earle of Somerset never parted from him with more seeming affection than at this time, when he knew Somerset should never see him more ; and had you seen that seeming affection, (*as the author himselfe did,*) you would rather have believed he was in his rising than setting. The Earle, when he kissed his hand, the King hung about his neck, slabbering his cheeks, saying, “ For Gods sake, when shall I see thee againe ? On my soul, I shall neither eat nor sleep until you come again.” The Earle told him on Monday, (this being on

the Friday,) "For Gods sake, let me," said the king—"Shall I, shall I?" then lolled about his neck. "Then, for Gods sake, give thy lady this kiss for me." In the same manner at the stayres head, at the middle of the stayres, and at the stayres foot. The earl was not in his coach when the king used these very words, (in the hearing of four servants, of whom one was Somersets great creature, and of the Bed-Chamber, who reported it instantly to the author of this history,) "I shall never see his face more."

Much of what is called the *Secret History* of King James's reign was written during the Commonwealth, when it was found profitable to publish works tending to degrade Kings, or shortly after the Restoration, when truth, justice, and all other virtues gave place to the loyal transports by which the nation was inflamed. There seems, however, no reason to doubt that, as Lord Bacon informs us, Sir E. Coke was originally entrusted with the examination of the circumstances regarding Overbury's murder, and that after he had made some progress in the investigation, and discovered that the Earl of Somerset was implicated, he obtained from the King an order for persons of higher rank than himself to be joined in the commission of inquiry with him. The following documents in the State Paper Office apparently show that Somerset was not arrested by Sir Edward Coke's warrant at Royston: nevertheless, they are, perhaps, compatible with the supposition, that when the King parted with Somerset at Royston, he might have

kissed him in the way he had been accustomed to do, and might have foreseen that those kisses would not have to be repeated.

Letter from the Commissioners to the King.

MOST GRACIOUS SOVEREIGN,

Our duties in most humble manner remembered, we have according to your Majty's letters had consideration of the examinations and testimonies concerning the Earl and Countess of Somerset, and as well of ourselves as by advice of the Judges of your Majty's Bench, according to your own direction, have thought it just and fit, that they should be severally examined, and consequently restrained of their liberties, we did at the first committ the said Earl to his own Chamber, and the Countess to keep her Chamber without access of any to either of them, other than their necessary servants; we have removed Mrs. Turner and Richard Weston from the several Aldermen, who formerly had the charge of them, to the safe and close custody of the Sheriffs of London severally. Against Richard Weston who is charged as a principal there shall be a speedy proceeding to trial (with the particulars of whose cause we will not trouble your Majesty). And according to your further commandment in your letters, we propose with all convenient speed to enter into an examination of the Earl and Countess. And sitting about this business we were informed by your Chief Justice of a great contempt committed by the said Earl on Monday last, who by his private warrant under his hand & seal (which the Chief Justice hath gotten into his hand and showed to us) caused Poulter a Pursuivant with the assistance of a Constable & smith to go to the house of W^m Weston son of the said Richard Weston and there in a cellar to pretend according to the pretext of his warrant to search for Bonds and writings concerning M^{rs} Hynde, the purpose in truth

being to search for writings concerning M^{rs} Turnor now in prison, as the Messenger himself confessed to the Constable, and the Pursuivant finding divers writings concerning M^{rs} Turnor the constable said that those were not within the warrant, to whom the Pursuivant answered, that the naming of M^{rs} Hynd was but a color to search for writings concerning his Maj^{ty} and all such writings as concerned M^{rs} Turnor, which they found in a trunk which they broke up, and in a bag & box which they opened, the Pursuivant carried away with him, which dealing of the said Earl as the case standeth, the foul fact depending in examinations, and M^{rs} Turner being your Majesty's prisoner, we hold a very great contempt to your Maj^{ty} and a mean to prevent a search for you, and as much as he can to suppress the truth, whereof we intend to examine him as in our duties we hold ourselves bound, and we have committed the Messenger for his lewd and unlawful dealing; and the Earl and Countess being committed yesternight, the Sheriff of London to whom M^{rs} Turnor was also committed yesternight about eight of the clock close prisoner, informed us that this present day that one M^r Whittacre that serveth the said Earl came about seven of the clock this morning on a Message from the Earl of Somerset to the said M^{rs} Turner, which the Sheriff very dutifully would not suffer to be done, but we tending your Maj^{ty}'s service sent presently for Whittacre, who confessed before us, that he was sent on a Message from the Earl and Countess about 7 of the clock this morning to the said M^{rs} Turnor & to will her to be of good comfort & that she having a weak & sickly body should not be dejected. We therefore upon consideration hereof, have thought fit this present afternoon, in respect of this attempt since his commitment to commit him to the house of the Dean of Westm^r under the safe custody of Sir Oliver Seintjohn as in like cases, concerning great personages have been used. As further

occurrences shall fall out, we shall with all expedition inform your Maj^{ty} of our proceedings in this great cause. And shall continually according to our most bounden duties ever pray to the Almighty for your Maj^{ty} in all prosperous and happy estate long to continue. From York house this 18 of October 1615.

Your Majesty's most humble and faithful subjects
& servants,

T. ELLESMERE, CANC. LENOX

E. ZOUCHE

EDW: COKE.

To the King's most excell^t Maj^{ty}.

[Indorsed] From the Commiss^{rs} for the cause of Sir Thomas Overbury to His Majesty.*

Letters from the Commissioners to the Earl and Countess of Somerset.

After our very hearty commendations to your Lo: These are by force of His Maj^{ty}'s letters under his gracious signature to us directed (we having had due consultation of certain examinations and testimonies concerning your Lo: and thereupon having occasion to examine you,) in His Maj^{ty}'s name to will and require you to keep your Chamber near the Cockpit at Whitehall without suffering of the access of any to you other than your own necessary servants until his Maj^{ty}'s pleasure be further known, And hereof requiring you not to fail—we bid your Lordship farewell from Yorkhouse this 17 of October 1615.

Your very loving friends.†

After our very hearty commendations to your Ladyship

* State Paper Office ; Domestic Papers, 1615, October 18, No. 204. Original in Lord Coke's hand.

† State Paper Office; Domestic Papers, 1615, October 17, No. 202. Original draft in Lord Coke's hand.

these are by force of His Maj^{ty}'s letters under his gracious signature to us directed (we having had due consideration of certain examinations and testimonies concerning your La: and thereupon having occasion to examine you) in his Maj^{ty}'s name to will and require you to keep your chamber either at your house in the Blackfriars if it be provided for you, or at the house of the Lord Knollis near the Tilt yard at your own election and choice, without suffering of the access of any to you other than your own necessary servants or attendants, until his Maj^{ty}'s pleasure be further known, and hereof requiring you not to fail, we bid you farewell, from York house this 17 of October 1615.

Your very loving friends.*

The Commissioners' Report to the King touching the Earl of Somerset.†

We are of opinion that there is vehement suspicion, and that the matter upon consultation of the examinations & testimonies is pregnant against the Earl of Somerset for being accessory to the poisoning of Sir Thomas Overbury before the fact done; And we had resolved to have committed the Earl to the Tower, before his Maj^{ty}'s coming to Whitehall, if he had not had the custody of the seals and other ensignes & ornaments of the Kings special favor. And the said seales and ensignes being taken from him, we held it necessary that the said Earl be committed to the Tower.

T. ELLESMERE, CANC.
LENOX
ZOUCHE
E. COKE.‡

* State Paper Office; Domestic Papers, 1615, October 17, No. 203. Original draft in Lord Coke's hand.

† Lord Coke's own indorsement.

‡ State Paper Office; Domestic Papers, 1615, October 17, No. 201. Original.

After these preliminary matters affecting the Earl and Countess of Somerset, it is desirable to relate a few particulars concerning a third person, to whom it was imputed to have been a principal conspirator in the plot against Sir T. Overbury. Sir F. Bacon said, at the Earl of Somerset's trial, that there were "three streams" flowing for Overbury's destruction, viz. from the hatred of the Earl and Countess of Somerset, and from that of the Earl of Northampton.

The Earl of Northampton obtained the reputation of being, according to Bishop Godwin, "the learnedest man among the nobility, and the most noble among the learned." Bacon selected him for presenting to King James his immortal work, "The Advancement of Learning," because, as he writes, Lord Northampton was the "learnedest Counsellor in the kingdom."

Lord Northampton was the great-uncle of the Countess of Somerset. Several of his Lordship's female relatives were of ill-governed dispositions. Another niece of his, sister of the Countess of Somerset, by her conjugal infidelity, gave origin to litigation which extended down to our own times, and was settled by the decision of the great case of the Banbury Peerage. His aunt afforded a notorious exception to the history of womankind, by voluntarily giving evidence, in a Court of Justice, to take away the life of her brother, Lord Northampton's father. That father was the celebrated Earl of Surrey, distinguished among his contemporaries for

his chivalrous spirit, but more distinguished among posterity for being one of the brightest of the early luminaries of English literature. His poetical adoration of Geraldine has contributed to endear his memory to the sympathies of the nation, and to kindle indignation against Henry VIII., the barbarous author of his unmerited fate.

The Earl of Northampton was made by King James Lord Privy Seal, Warden of the Cinque Ports, Constable of Dover Castle, Chancellor of the University of Cambridge, High Steward of the University of Oxford, and Knight of the Garter. His wealth was very great, and the state he kept was in proportion. We read, that, on one occasion, he was accompanied into London by a cavalcade of sixty gentlemen on horseback. The ancient and spacious mansion of Northumberland House, formerly called Northampton House, at Charing Cross, was built by him, and he died in it. If the generally received opinions concerning the murder of Sir T. Overbury are true, it was most probably in this edifice, which forms a remarkable constituent in our earliest impressions derived from the London streets, that the imprisonment and poisoning of Sir T. Overbury were plotted.

The Earl of Northampton published in the year 1583 a learned, philosophical, and entertaining work, of which the object was to expose the vulgar errors depending on prognostications of future events by dreams, oracles, astrology, and other de-

lusive means. The Harleian and Bodleian collections contain several of his manuscripts. Among the Cottonian MSS. (Titus, C. 6) there are 1200 pages of MSS. written chiefly with his own hand. These remains consist of speeches, small treatises, observations, and poems. Among them are prayers and devotional works. A letter to the Archbishop of Canterbury accompanies one collection of prayers, wherein the Earl writes "that he had tasted, by experience of private devotional exercises for the space of many years, what comfort they work in a faithful soul." The Earl's piety and charity have been lauded on account of his having erected and endowed three hospitals, one at Greenwich, another at Clare in Shropshire, and another at Castlerising in Norfolk. It is a singular circumstance in the history of mankind, that a person of such exalted rank and station as that enjoyed by the Earl of Northampton, so eminently distinguished for learning and abilities, so respected and admired during his life, so benevolent in the outward manifestations at least of charity, so pious in the language at least of prayer and holy meditation, should now be generally represented by historians as a principal agent in a murder accompanied with circumstances of consummate craft and the deepest malignity. The Earl died on the 15th of June, A. D. 1614, before any suspicions had been awakened concerning the cause of Overbury's death. A letter written by him, when at the point of death, to the Earl of

Somerset, will raise a question in the ensuing inquiry, whether it contain indeed a panegyric of a dying assassin upon the accomplice of his crime.

After adverting to the above circumstances in the lives of the Earl and Countess of Somerset, and of the Earl of Northampton, the alleged principal conspirators in a plot against the life of Sir T. Overbury, a short notice of the subordinate and more obscure agents will afford the reader all the information that can be obtained, or is wanted for an introduction to the *Dramatis Personæ* of the following Tragedy.

Before proceeding to a perusal of the trial of the Earl of Somerset, it is necessary to be premised, that four individuals, Richard Weston, Anne Turner, Sir Gervase Helwysse,* and James Franklin, had

* The spelling of this name is adopted from the autograph signature. In Howell's State Trials it is spelt Elwes. The following variations occur:—His name is written Sir Jeruays *Elwishe* by his predecessor in office, Sir William Wood; Sir Gervais *Helwys* in Weston's examination, 29th Sept. 1615; Sir Jervys *Elvys* in Secretary Winwood's letter to the Commissioners, 24th Oct. 1615; Sir Jervace *Helwisse* in a letter by the Commissioners to Secretary Winwood, 26th Oct. 1615; Sir Gervase *Helwise* in the King's warrant, 17th Nov. 1615. His name is written *Elwaies* by Sir A. Weldon; *Yelvis* by Baker, 434; Sir Jervas *Yelvis* in the woodcut sheet of his dying speech in the Library of the Antiquarian Society. *Ger. Helwysse*, *Gervase Helwysse* are his own signatures, 18th Nov. 1615. See some curious examples of the uncertainty of ancient spelling mentioned in Barrington's "Observations on the Statute 14th Edward III. On the five ancient ways of spelling the name of the celebrated actress *Nell Gwynn*, see Davies's "Roscius Anglicanus." On the fourteen ways of spelling the name of *Villiers*, see "Fuller's Worthies."

been executed for the murder of Sir T. Overbury. Weston had been the gaoler of Overbury, and was supposed to have administered the poisons. Mrs. Turner was the confidante of the Countess of Somerset; it was she who procured the poisons from Franklin, and delivered them to Weston. Helwysse was the Lieutenant of the Tower, who connived at the proceedings; and Franklin was the apothecary whose poverty or whose will consented to furnish poisons according to order.

None of these four persons were of consequence enough to have had any occasion of personal resentment against Sir T. Overbury. When we shall follow Sir G. Helwysse to the scaffold, we shall find him very communicative concerning the details of his past life: but had it not been for this murder in the Tower, posterity would have known nothing of these subordinate conspirators, except possibly of Mrs. Anne Turner, the inventress or the introducer into England of the preparation of yellow starch applied to ladies' *ruffs*.

Michael Sparke, who, under the affected latinized name of *Scintilla*, published his "Truth brought to light by Time," in the year 1651,* relates, with little probability of truth, that Mrs. Turner was actually sentenced by Sir E. Coke to be hanged at Tyburn in a ruff stiffened with her own yellow starch. This author appears to have been a severe

* A copy of this work, with MS. notes by Sir James Mackintosh, is in the library of the Athenæum Club.

"*censor morum*," for he expresses a wish that the Judges of his day would sentence female offenders to be hanged with *naked bosoms and backs*, as it might discourage the general practice of ladies going about only half clad. Howell, a contemporary of Mrs. Turner, in his *Medulla*, states that she did, in fact, wear a ruff at her execution, dyed with her yellow starch; and that, in consequence, this article of fashion became at once out of vogue.

It has been seen that the Countess of Somerset appeared at her trial in a *ruff*.* Stubbes, in his "Anatomy of Abuses," applies a zealous castigation to all the manners and practices of the day which were offensive to his puritanical spirit; but it has perversely happened, that his book is now the chief depository of all the obsolete extravagances of our ancestors. The ruff, and its auxiliary the starch, are more particularly described in the pages of Stubbes than by any other author. He writes of the ladies of his day that have "great and monstrous ruffles, made either of cambricke, holland, lawne, or els of some other the finest cloth that can be got for money, whereof some be a quarter of a yarde deepe; yea, some more, very few lesse; so that they stande a full quarter of a yarde (and more) from their neckes, hanging over their shoul-

* In Strutt's "Manners and Customs," vol. iii. plate 16, No. 4, is a picture of the Earl and Countess of Somerset. The Earl is dressed with *stays*, the Countess has on a farthingale and *ruff*. Strutt gives several illustrations of the *ruff*.

der-points, instead of a vaile. But if Æolus with his blasts, or Neptune with his storms, chaunce to hit upon the crasie barke of their brused ruffles, then they goeth *flipflap* in the winde, like ragges that flew abroad, lying upon their shoulders like the disheloute of a slut. But, wot you what? The devil, as he, in the fullnesse of his malice, first invented these great ruffles, so hath he now found out also two great pillars to beare up and maintaine this his kyngdome of great ruffles (for the devil is kyng and prince over all the children of pride). The one arche or pillar, whereby his kyngdome of great ruffles is underpropped, is a certain kinde of liquid matter, which they call starch, wherein the devil hath willed them to wash and die their ruffles well; and this starch they make of divers colors and hues, white, red, blue, purple, and the like, which, beyng drie, will then stand stiff and inflexible about their neckes. The other pillar is a certaine device made of wiers, crested for the purpose, whipped over either with gold, thred, silver, or silke; and this he calleth a supportasse, or underpropper. This is to bee applied round about their neckes, under the ruffe, upon the outside of the bande, to beare up the whole frame and bodie of the ruffe from fallng and hangng doune."

The following descriptions by a contemporary poet will present the reader with a lively picture of the personal appearance of several of the conspirators. They are taken from a poem called "Sir T.

Overbury's Vision," published in the year 1616,* the very year of the Earl of Somerset's trial.

WESTON.

"Aman of meagre looks, devoid of blood,
Upon whose face Death's pale complexion stood;
Of comely shape, and well composed of limb,
But slender-made; of visage stern and grim.
The hairs upon his head, and grisly beard
With age grown hoary, here and there appeared.
Time's iron hand, with many a wrinkled fret,
The marks of age upon his front had set.

MRS. TURNER.

"It seem'd that she had been some gentle dame,
For on each part of her fair body's frame
Nature such delicacy did bestow,
That fairer object oft it doth not show.
Her crystal eye, beneath an ivory brow,
Did show what she at first had been: but now
The roses on her lovely cheeks were dead;
The earth's pale colour had all overspread
Her sometime lovely look; and cruel Death,
Coming untimely, with his wintry breath,
Blasted the fruit, which cherry-like in show
Upon her dainty lips did whileome grow.
Oh how the cruel cord did misbecome
Her comely neck! and yet by law's just doom
Had been her death. Those locks like golden thread,
That used in youth t' enshrine her globe-like head,

* The student of English poetry will read with much interest several of the lines; which, if he had not been apprized of their date, he would probably have supposed to have been written after the period of Waller and Denham.

Hung careless down ; and that delightful limb,
 Her snow-white nimble hand, that used to trim
 Their tresses up, now spitefully did tear
 And rend the same. Nor did she now forbear
 To beat that breast of more than lily-white,
 Which sometime was the lodge of sweet delight.
 From those two springs where joy did whileome dwell,
 Grief's pearly drops upon her pale cheeks fell."

Of Mrs. Turner's yellow starch for ruffs the poet
 sings :—

" But of all vain inventions then in use
 When I did live, none suffer'd more abuse
 Than that fantastic ugly fall and ruff
 Daub'd o'er with that base starch of yellow stuff."

ELWES.

" Seem'd to be,
 When he did live, some man of good degree
 'Mongst men on earth : one of so solemn look,
 As if true gravity that place had took
 To dwell upon. His person comely was ;
 His stature did the meaner size surpass ;
 Well shaped in every limb, well step'd in years,
 As here and there appear'd in some grey hairs."

FRANKLIN.

" A man he was of stature meanly tall,
 His body's lineaments were shaped, and all
 His limbs compacted well, and strongly knit.
 Nature's kind hand no error made in it.
 His beard was ruddy hue, and from his head
 A wanton lock itself did down dispread
 Upon his back ; to which, while he did live,
 Th' ambiguous name of *Elf-lock* he did give."

Harl. MSS., vol. vii.

Having thus introduced to the reader's notice both the principal conspirators and the subordinate agents in the plot against Sir T. Overbury's life, it only remains to advert to a few particulars regarding Sir T. Overbury himself. It will be unnecessary in this place to relate many circumstances which are fully detailed in the course of the trial that will be set forth in the following pages. It is there represented that Sir T. Overbury exercised for several years the extraordinary vocation of imparting ideas and language to the Earl of Somerset, as to a puppet, who, by means of his secret suggestions, moved the inclinations of King James which way he would, governed councils, and fascinated the beauties of the Court; and that he crowned his vicarious achievements by writing love-letters in his patron's name, through which Lady Essex was led to indulge a guilty passion.

It will be seen, in the course of the following pages, that there is much room for mysterious conjecture respecting the intimacy of Overbury with the Earl of Somerset, if not also with King James. But it is a more gratifying and easier task to examine that favourable aspect of the character and genius of Sir T. Overbury, which is afforded by his own literary works.

Although the contributions of Sir T. Overbury to the literature of the country have been eclipsed by the fame of contemporaries, which even throw into the shade the works of all writers from that age to

the present, yet, at the time when the nation was edified and charmed by the fresh productions of a living Shakspeare and Bacon, and, in the second rank, of Ben Jonson, Raleigh, Selden, Donne, Beaumont, Fletcher, and Massinger, nevertheless Overbury's poem of the "Wife" and Overbury's "Characters" were read and admired. A tenth edition of his works was published in 1754, and the first forty pages consist of elegies and tributes of admiration, with manifold regrets that his "Wife" had grown husbandless of late.

A contemporary writer suggests that Overbury's "Wife" was written with a view to dissuade the Earl of Somerset from marrying his Countess. The following lines may be thought to have some reference to that end:—

" For 'tis seldom seen that blood
Gives a beauty great and good."

And we may suppose a Lady whose eyes were described as " wombs of stars," and was " a beauty of the first magnitude in the horizon of the Court," would not have corresponded with the commonplace wife recommended in the following lines :—

" A passive understanding to conceive,
And judgment to discern, I wish to find.
Beyond that all as hazardous I leave.
Learning and pregnant wit in womankind,
What it finds malleable maketh frail,
And doth not add more ballast, but more sail.

“ Domestic charge doth best that sex befit,
Contiguous business so to fix the mind,
That leisure space for fancies not admit.
Their leisure 'tis corrupteth womankind :
Else being placed from many vices free,
They had to heav'n a shorter cut than we.”

The nature of Overbury's "Characters" may be collected from his "Character of a Character," which he defines "a quick and soft touch of many strings, all shutting up in one musical close: it is wit's descant on a plain song." A few extracts from some of these productions will throw light on the "character of Sir Thomas Overbury." Overbury's "Characters" were the first compositions of the kind of any note in England. Among a multitude of imitations, the "Characters" of Bishop Earle are the only ones which have obtained any celebrity.

EXTRACT FROM THE "CHARACTER OF A NOBLE SPIRIT."

He converts all occurrences into experience, between which experience and his reason there is marriage, the issue are his actions. He licenceth not his weakness to wear fate, but knowing reason to be no idle gift of nature, he is the steersman of his own destiny. Unto the society of men, he is a Sun, whose clearness directs their steps in a regular motion. He is the wise man's friend, the example of the indifferent, the medicine of the vicious. Thus time goeth not from him, but with him, and he feels age more by the strength of his soul, than by the weakness of his body;—he esteems the pains of failing nature as friends, that desire to file off his fetters, and to help him out of prison.

EXTRACT FROM THE "CHARACTER OF A NOBLE
HOUSEKEEPER."

Is one whose bounty is limited by reason, not ostentation, and to make it last, he deals it discreetly, as we sow the furrow, not by the sack, but by the handful. He can survey good and love it, for he loves to do it himself for his own sake, not for thanks;—He knows there is no such misery as to outlive a good name, and no such folly as to put it in practice—Nobility lightens in his eyes, and in his face and gesture is painted the god of hospitality;—His great house bears in front more durance than state, unless this adds the greater state to it, that it promises to last out much of our now fantastical building:—His thoughts have a high aim, though their dwelling be in the vale of the human heart;—He hath put a gird about the whole world, and sounded all its quicksands—He hath his hand over fortune, that her injuries, how violent or sudden soever, do not daunt him; for whether his time call him to live or die, he can do both nobly: If, to fall, his descent is breast to breast to virtue; and even then, like the sun near to its set, he shews unto the world his clearest countenance.

EXTRACT FROM THE "CHARACTER OF AN EXCELLENT
ACTOR."

Whatsoever is commendable in the grave orator, is most exquisitively perfect in him, for by a full and significant action of body, he charms our attention;—Sit in a full theatre and you will think you see so many lines, drawn from the circumference of so many ears, while the actor is the centre;—He doth not strive to make nature monstrous, she is often seen in the same scene with him, but neither on stilts or crutches. By his action he fortifies moral precepts with example, for what we see him personate we think only done before us;—A man of deep thought might

apprehend the ghosts of our ancient heroes walked again, and take him (at several times) for many of them. A worthy actor, in one kind, is the strongest motive of affection that can be; for, when he dies, we cannot be persuaded any man can do his parts like him.

EXTRACT FROM THE "CHARACTER OF A FRANKLIN."

Though he be master, he says not to his servants "Go to field" but "Let us go." His own fold yields him both food and raiment, whilst curious gluttony ransacks, as it were, Noah's ark for food;—When he builds, no poor tenant's cottage hinders his prospect; they are indeed altar houses, though there be painted on them no such superscription: He never sits up late, but when he hunts the badger, the vowed foe of his lambs; nor uses any subtlety, but when he setteth snares for the snipe, or pitfalls for the black-bird; nor oppression, but, when, in the month of July, he goes to the next river and shears his sheep;—He allows of honest pastime, and thinks not the bones of the dead any way bruised though the country lass dance in the churchyard after Even-song. Rock-Monday, and the wake in summer, shrotings, the wakeful ketches on Christmas eve, the hoky, or seedcake, these he yearly keeps, yet holds them no relics of Popery;—He is not solicitous of news derived from the privy-closet, when the finding an eiery of hawks, or the foaling of a colt come of a good strain, are tidings more pleasant and more profitable. Lastly, to end him; he cares not when his end comes: he need not fear his *audit*, for his *quietus* is in heaven.

EXTRACT FROM THE "CHARACTER OF A MILKMAID."

In milking the cow, and straining the teats through her fingers, it seems that so sweet a milk-press makes the milk whiter or sweeter, for never came almond-glore, or aromatic

ointment on her palm to taint it. She doth not by lying long in bed spoil both her complexion and conditions; she rises with chanticleer, her dame's cock, and, at night, makes the lamb her curfew. Her breath is her own, which scents all the year long of June, like a new-made hay-cock: When winter-evenings fall early, sitting at her wheel she sings defiance to the giddy wheel of fortune. She bestows her year's wages, at the next fair, and in choosing her garments, counts no bravery in the world like decency. The garden and the bee-hive are all her physic and surgery, and she lives the longer for it. She dares go alone, and unfold the sheep in the night, and fears no manner of ill, because she means none; yet to say the truth she is never alone, but is still accompanied with old songs, honest thoughts, and prayers, but short ones; yet they have their efficacy, in that they are not palled with ensuing idle cogitations. Her dreams are so chaste that she dare tell them; only a Friday's dream is all her superstition. Thus lives she, and all her care is, that she may die in the spring, to have store of flowers stuck upon her winding-sheet.

EXTRACT FROM THE "CHARACTER OF A SAILOR."

He sees God's wonders in the deep, but so as they rather appear his playfellows than stirrers of his zeal. In a storm 'tis disputable, whether the noise be most his, or the elements, and which will first leave scolding. Upon any but a wooden horse he cannot ride, he swarms up to his seat as to a sailyard, and cannot sit unless he bear a flag-staff. If ever he be broken to the saddle, 'tis but a voyage still, for he mistakes the bridle for a bowling, and is ever turning his horse tail. He can pray, but tis by rote, not faith, and when he would, he dares not, for his brackish belief hath made that ominous. A rock or quicksand pluck him before he be ripe, or else he is gathered to his friends at Wapping.

These extracts, brief as they are, will probably increase the interest of the reader in the fate of Sir T. Overbury. They will, perhaps, afford an idea of his works, sufficient to indicate that he was capable of elevated sentiments, had studied mankind in the original, and yet had a love of simplicity and inartificial nature. The lively and humorous vein which pervades some of his characters, though it be occasionally alloyed by the taste of the age for punning and conceit, manifestly belonged to a social and mercurial spirit.

The melancholy fate of Sir T. Overbury, his enemies,—the favourite of a King, a Countess, whose vices and sorceries, according as lust or vengeance prompted, confirmed the experience of history, that the very few very bad women whom the world has seen, have been the worst of God's creatures, a fitting Confidante for such a mistress, a Mantuan Apothecary of real life, a Lieutenant and Gaoler of those Towers of Julius,

“With many a foul and midnight murder fed”—

may be supposed capable of affording a suitable theme for the Tragic Muse. Savage wrote a tragedy called “Overbury,” founded upon this history. He composed it in the streets and fields, when he had no lodging, but occasionally stepped into a shop to borrow ink and paper in order to transcribe his ideas. He gained 200*l.* by the piece, —a larger sum of money than he

was ever before or after possessed of. The tragedy was found to create a deep interest in the public more than a century after the tomb had imposed its equal law on the murderers and their victim, the King, the Judges, the Peers, and the dense crowds who, to satisfy curiosity in all that related to these proceedings, flocked to Westminster Hall or peopled the fields of Tyburn.

CHAPTER II.

REPORTS OF THE TRIAL OF THE EARL OF SOMERSET.

SECTION I.

THE REPORT IN HOWELL'S STATE TRIALS.

It is to be regretted that in Hargrave's and in Howell's State Trials, the reader is seldom furnished with any references to the authorities from which the reports of the different trials are taken. The reports of the more ancient trials in these collections were most probably copied from publications prepared under the inspection of the chief Officers of State and of the Law, and sometimes revised by the Sovereign himself. We should not attach much credit to a report published by the Austrian Government of a trial of William Tell, or, by the French Republic, of the trials of Louis XVI. and of Queen Marie Antoinette; but, in our domestic history, we are too apt to surrender our belief to the only extant details of our ancient State Trials, without duly considering by whom and with what motives they were published.

The course of proceeding, in ancient times, for crushing an individual who had excited fears or

kindled hatred in the breast of a Sovereign, was somewhat after the following manner:—Written examinations were taken in secret, and often wrung from prisoners by the agonies of the rack. Such parts of these documents, and such parts only, as were criminative, were read before a Judge removeable at the will of the Crown, and a jury packed for the occasion, who gave their verdict under the terror of fine and imprisonment. Speedily the Government published whatever account of the trials suited their purposes. Subservient Divines were next appointed to “press the consciences,” as it was called, of the condemned, in their cells and on the scaffold; and the transaction terminated with another Government *brochure*, full of dying contrition, and eulogy by the criminal on all who had been instrumental in bringing him to the gallows. In the meanwhile the Star Chamber, with its pillories, its S. L.’s branded on the cheeks with a hot iron, its mutilations of ears, and ruinous fines, prohibited the unauthorized publication of trials, and all free discussion upon them, as amounting to an arraignment of the King’s justice.

The right of publishing State Trials, till a comparatively late period, appears to have been restricted to persons appointed for the purpose. Thus, in regard to the trial of Plunket, the titular Primate of Ireland, for high treason, in the 33rd year of Charles II., we have the following imprimatur:—“I do appoint Francis Tyton and Thomas Basset to

print the trials of Edward Fitzharris and Oliver Plunket, and that no others presume to print the same.—*F. Pemberton.*”

In the time of Queen Anne, long after the abolition of the Star Chamber and the emancipation of the press, we have an instance of jealousy entertained in regard to the unrestricted publication of trials. It is the more remarkable as it occurred before Lord Holt, a strenuous champion for liberty. The transaction is thus related in Howell’s *State Trials*, vol. xiv. p. 935.

“*Counsel.*—My Lord, we insist upon it, that these *fellows* should not go on writing.

“Ordered, That the writers be turned out of the Court.

“And accordingly they were turned out, at the repeated instance, &c. However, thus far the shorthand writers had proceeded with great exactness; and they are ready, by their handwriting and notes, to justify all before mentioned in this trial, which by this time was very nearly ended.”

In a paper which one Haagen, executed for the abduction of an heiress in the first year of the reign of Queen Anne, delivered to the Sheriff on the scaffold, he complains, “I expected my trial should be published, that the world might see my treatment—what I have done, and what I have left undone in my case; but I am informed it may not be printed.”

Mr. Jardine has furnished the readers of his *Criminal State Trials* with many interesting parti-

culars concerning their secret history. He points out various instances in which the printed reports are contradicted by the original documents in the State Paper Office. In the case of most of these variances, an obvious motive of policy is assignable for the departure from truth.

For example, no extant report, either in print or manuscript, is now to be found of the trials for the Gunpowder Plot, except that printed by the King's printer. The original examinations in the State Paper Office, which are represented to be truly set forth in this Government version of the trials, are full of interlineations and alterations. One interlineation, written in a different ink and different hand-writing from the body of Guy Fawkes's declaration, changes the position of two conspirators, making the one, who was of more wealth and consequence than the other, appear to have been introduced into the plot at an earlier period than the other, and *vice versa*; contrary to Fawkes's own statement, but in accordance with the printed report. A copy of a deposition in the State Paper Office contains in the margin a remark in the hand-writing of King James, viz. "An unclare phrase." This obscurity is accordingly removed by an interlineation, and the document is published in its altered state. In Fawkes's declaration in the State Paper Office there is no mention of a person of the name of Owen: but, in the printed report, Fawkes is made to say, that he went

over to the Netherlands, "to acquaint Owen with the particulars of the plot." The motive for this interpolation was, because the Government were at the time endeavouring to induce Archduke Albert to give up Owen, who was an English officer in his service in Flanders. In this instance, for fear of comparison being made between the interpolation and the original document, the date of Fawkes's declaration is artfully suppressed in the printed report. The published *indictment* against the conspirators varies from the original record in the *Baga de Secretis* ; as, in particular, with regard to the mode in which the conspirator Tresham is represented in the report to have been charged, which is different from the way whereby he was really charged. This circumstance, if taken in connexion with the very careful erasure or obliteration of Lord Mounteagle's name in all the original documents connected with the plot, tends to confirm the supposition, that the plot was discovered by Tresham to Lord Mounteagle, and by him to the Government, and thus to destroy the romance of the mysterious letter, for interpreting which King James, in the preamble to an Act of Parliament, is stated to have had the assistance of the Holy Spirit. The speeches of Sir E. Coke and the Earl of Northampton concerning the Gunpowder Plot contain anachronisms, which betray that they were manufactured subsequently to the trials at which they are reported to have been delivered.

In like manner, Lord Bacon's published "Declaration of the Treasons of Lord Essex" is replete with variations from the original records. Numerous passages in the original papers are marked in Lord Bacon's hand-writing with the letters "Om" (omit). It is apparent that these omitted passages were all read at the trial, because upon the same papers are found the directions to the officer of the Court, in Sir E. Coke's (the Attorney-General) hand-writing, as to what passages he was to pass over in reading.

A single example will suffice to display the motive of such omissions. The part omitted by Bacon in the following declaration by Sir Christopher Bland is printed in italics.

"Being demanded, to what end they went to the City? he confesseth it was to secure the Earl of Essex's life against such forces as should be sent against him. And being asked, what, against the Queen's forces? he answered, that must have been judged afterwards, *for the forces might be such as came by direction of such of his enemies as might have had authority to command in the Queen's name, and would have done that without the Queen's privity.*"

In the same original paper it is also stated that the Earl of Essex "in his usual talk used to say that he liked not that any man should be troubled for his religion." This passage is omitted by Lord Bacon; but it is also marked for omission by Sir E. Coke, and was therefore not read at the trial,

agreeably to the prevalent usage of omitting whatever was favourable to a prisoner.

The report of the trials for the Overbury murder, with the exception of those of the Earl and Countess of Somerset, correspond verbatim with the reports of these trials published in the tract "Truth brought to Light by Time." The dress of Sir Gervase Helwysse at his execution, it is believed, is the only circumstance in the tract which has not been copied in the State Trials. The tract does not include the trials of the Earl and Countess of Somerset, and it is not apparent from what source Hargrave and Howell obtained them.

The Trial of ROBERT CARR, EARL OF SOMERSET, May 25, for the Murder of Sir Thomas Overbury :
14 JAMES I. A. D. 1616.

Ser. Cryer.—O yes, my Lord High Steward of England purposes this day to proceed to the trial of Robert Earl of Somerset. O yes, whosoever have any indictments touching this cause, publicly give them in.

My Lord Coke delivers in the indictment of my Lord of Somerset to Mr. Fenshaw indorsed.

Ser. Cryer.—O yes, Walter Lee, Serjeant-at-Arms, return the precept for the Lords which thou hast warned to be here this day. O yes. [He calls every Lord by his name, and they stand up as they be called.] My Lord High Steward excuses the Lords Mounteagle and Russell of their absence, in respect of their sickness.

Ser. Cryer.—O yes, Lieutenant of the Tower return thy precept, and bring the prisoner to the bar. Which he did, and my Lord makes three reverences to the Lord High Steward and the Lords.

Mr. Fenshaw.—Robert Earl of Somerset hold up thy hand.

He holds it up so long until Mr. Lieutenant bad him hold it down. The indictment is read, containing Weston's actions in the poisoning of Sir T. Overbury, and his abetting of him, the 8th of May, 1613. My Lord of Somerset was apparelled in a plain black satin suit, laid with two satin laces in a seam; a gown of uncut velvet lined with unshorn, all the sleeves laid with satin lace; a pair of gloves with satin tops; his George about his neck, his hair curled, his visage pale, his beard long, his eyes sunk in his head. Whilst his indictment was reading, he three or four times whispered to the Lieutenant.

Mr. Fenshaw.—Robert Earl of Somerset what sayest thou? Art thou guilty of this felony and murder whereof thou standest indicted, or not guilty?

My Lord of Somerset, making an obeisance to the Lord High Steward, answered, Not guilty.

Mr. Fenshaw.—How wilt thou be tried?

Lord Somerset.—By God and the country; but presently recalling himself, said, By God and my peers.

Ser. Cryer.—O yes, all you that be to give in evidence against Robert Earl of Somerset, who stands now at the bar upon his deliverance, make your appearance, and you shall be heard what you have to say against him.

My Lord of Somerset upon his arraignment having pleaded not guilty, the proceeding after was thus:—

Lord High Steward (Ellesmere, Lord Chancellor).—Robert Earl of Somerset, you have been arraigned, and pleaded Not guilty. Now, I must tell you, whatsoever you may have to say in your own defence, say it boldly,

without fear; and, though it be not the ordinary custom, you shall have pen and ink to help your memory. But remember that God is the God of truth. A fault defended is a double crime. Hide not the verity, nor affirm an untruth; for to deny that which is true increases the offence. Take heed lest your wilfulness cause the gates of mercy to be shut upon you. Now for you, my Lords the Peers, you are to give diligent attention to that which shall be said; and you must not rest alone upon one piece of evidence, but ground your judgment upon the whole. This, moreover, I would have you remember, that though you be not sworn as common juries, upon a book, yet that you are tied in as great a bond—your own honour and fidelity, and allegiance to the King; and thus I leave the whole proceeding to your censures. And for you that be of the King's counsel, free your discourse from all partiality, but let truth prevail, and endeavour to make it appear.

Serjeant Montague.—My Lord High Steward of England, and you my Lords, this cannot but be a heavy spectacle unto you, to see that man that not long since in great place, with a white staff, went before the King, now at this bar hold up his hand for blood; but this is the change of fortune—nay, I might better say, the hand of God, and work of justice, which is the King's honour. But now to the fact. Robert Earl of Somerset stands indicted, as accessory before the fact, of the wilful murder and poisoning of Sir T. Overbury, done by Weston, but procured by him: this, my Lord, is your charge. The indictment hath been found by men of good quality, seventeen knights and esquires of the best rank and reputation, some of whose names I will be bold to read unto you—Sir T. Fowler, Sir W. Slingsby, and fifteen more; these have returned *billa vera*. Now, an indictment is but an accusation of record, in form thus: Weston, four several times, gave Overbury four several poisons—the

first, May 9, 1613, that was rosalgar, carrying this poison in one hand and his broth in the other; the second was June following, and that was arsenic; the third was July the 10th following, and that was mercury sublimate in tarts; the fourth was September the 14th following, and that was mercury sublimate in a clyster, given by Weston and an apothecary yet unknown, and that killed him. Of these four several poisons ministered by Weston, and procured by you the 15th of September, 1615, Overbury died, and the author is ever worse than the actor. The first poison laid in the indictment, that Weston gave Sir T. Overbury, was the 9th of May; and, therefore, we say, that the Lord Somerset, the 8th of May, hired, counselled, and abetted Weston to this fact; and as this day, my Lord, I do charge you for a King, so heretofore King David was charged in the like case, for the murder of Uriah, and though David was under his pavilion, and Uriah in the army, yet David was the cause of his murder; so though you were in the King's chamber and Overbury in the Tower, yet it was you that killed him. It was a stronger hand than Weston's that wrought this. The proof, Mr. Attorney, will follow. And I will now conclude with two desires to the Peers: first, that they will not expect visible proofs in the work of darkness; the second is, that whereas in an indictment there be many things laid only for form, you are not to look that the proof should follow that, but only that which is substantial: and the substance must be this—whether my Lord of Somerset procured or caused the poisoning of Sir T. Overbury, or no.

Lord High Steward.—That, indeed, my Lords, is that which you are to look after—whether my Lord of Somerset was the cause of his poisoning, or not.

Lord Coke.—This was very well moved by Mr. Recorder, and the law is clear in this point, that the proof must follow the substance, not the form.

The Judges, all rising, affirmed this to be true.

Attorney-General (Sir Francis Bacon).—May it please your Grace, my Lord High Steward of England, and you my Lords the Peers, you have here before you Robert Earl of Somerset to be tried for his life, concerning the procuring and consenting to the poisoning of Sir T. Overbury, then the King's prisoner in the Tower of London, as an accessory before the fact. I know your honours cannot behold this nobleman, but you must remember the great favours which the King hath conferred on him, and must be sensible that he is yet a member of your body, and a Peer as you are, so that you cannot cut him off from your body but with grief; and, therefore, you will expect from us that give in the King's evidence, sound and sufficient matter of proof to satisfy your honours' consciences. As for the manner of the evidence, the King, our master, who, amongst other his virtues, excelleth in that virtue of the imperial throne, which is justice, hath given us command that we should not expatiate nor make invectives, but materially pursue the evidence as it conduceth to the point in question—a matter that, though we are glad of so good a warrant, yet we should have done of ourselves; for far be it from us, by any strains of wit or arts, to seek to play prizes, or to blazon our names in blood, or to carry the day otherwise than upon sure grounds; we shall carry the lantern of justice (which is the evidence) before your eyes upright, and so be able to save it from being put out with any ground of evasion or vain defence, not doubting at all but that the evidence itself will carry that force, as it shall need no advantage or aggravation. First, my Lords, the course that I will hold in delivering of that which I shall say, for I love order, is this:—First, I will speak somewhat of the nature and greatness of the offence which is now to be tried, not to weigh down my Lord with the greatness of it, but rather contrarywise, to show that a great offence needs a good proof; and that the King, howsoever he might esteem this gentleman heretofore as the signet upon his finger, (to

use the Scripture phrase,) yet in such a case as this he was to put it off. Secondly, I will use some few words touching the nature of the proofs which in such a case are competent. Thirdly, I will state the proofs. And, lastly, I will produce the proofs, either out of examination and matters of writing, or witnesses *viva voce*.

For the offence itself, it is of crimes, next unto high treason, the greatest: it is the foulest of felonies. It hath three degrees: first, it is murder by impoisonment; secondly, it is murder committed upon the King's prisoner in the Tower; thirdly, I might say that it is murder under the colour of friendship—but that is a circumstance moral, and therefore I leave that to the evidence itself. For murder, my Lords, the first record of justice which was in the world was judgment upon a murderer, in the person of Adam's first-born, Cain; and though it was not punished by death, but banishment and marks of ignominy, in respect of the population of the world, yet there was a severe charge given that it should not go unpunished. So it appeareth likewise in Scripture that the murder of Abner by Joab, though it were by David respited in respect of great services past or reason of state, yet it was not forgotten. But of this I will say no more, because I will not discourse; it was ever admitted and ranked in God's own tables that murder is, of offences between man and man, next unto high treason and disobedience to authority, (which sometimes have been referred to the first table, because of the lieutenancy of God in Princes,) the greatest. For impoisonment, I am sorry it should be heard of in our kingdom; it is not "*nostri generis nec sanguinis peccatum*;" it is an Italian comfit for the Court of Rome, where that person that intoxicateth the Kings of the earth is many times really intoxicated and poisoned himself. But it hath three circumstances which make it grievous beyond other matters. The first is, that it takes a man away in full peace, in God's and the King's peace, that thinks no harm, but is comfort-

ing of nature with refection and food ; so that, as the Scripture saith, “ his table is made a snare.” The second is, that it is easily committed and easily concealed ; and, on the other side, hardly prevented and hardly discovered. For murder by violence Princes have guards, and private men have houses, attendants, and arms ; neither can such murder be committed but *cum sonitu*, with some overt and apparent acts that may discover and trace the offenders ; but for poison, the cup itself of Princes will scarce serve in regard of many poisons that neither discolour nor distaste ; it comes upon a man when he is careless and without suspicion, and every day a man is within the gates of death. And the last is, because it concerneth not only the destruction of the maliced man, but of every man, “ *Quis modo tutus erit ?*” For many times the poison is prepared for one and is taken by another, so that men die other men’s deaths, “ *Concidit infelix alieno vulnere ;*” and it is as the Psalmist calleth it, “ *sagitta nocte volans,*” the arrow that flieth by night—that hath no aim nor certainty. And, therefore, if any man shall say to himself, “ Here is great talk of impoisonment, but I am sure I am safe, for I have no enemies, neither have I anything another man should long for ;” why, that is all one,—he may sit next him at the table that is meant to be impoisoned, and pledge him of his cup, as we may see in the example of 21 Henry VIII., that where the purpose was to poison one man, there was poison put into barm or yeast, and with that barm pottage or gruel was made, whereby sixteen of the Bishop of Rochester’s servants were poisoned ; nay, it went into the alms-basket likewise, and the poor at the gate were poisoned. And, therefore, with great judgment, did the statute made that year, touching this accident, make impoisonment high treason, because it tends to the dissolving of human society ; for whatsoever offence doth so, is in the nature thereof high treason. Now for the third degree

of this particular offence, which is, that it is committed upon the King's prisoner, who was out of his own defence, and merely in the King's protection, and for whom the King and the State were a kind of respondent: it is a thing that aggravates the fault much; for certainly, my Lord of Somerset, let me tell you this, that Sir T. Overbury is the first man that was murdered in the Tower of London, save the murder of the two young Princes by the appointment of Richard III.

Thus much of the offence. Now to the proofs. For the matter of proofs you may consider that impoisonment, of all offences, is most secret, even so secret that if in all cases of impoisonment you should require testimony, you should as good proclaim impunity. Who could have impeached Livia by testimony for the poisoning of her figs upon the tree, which her husband was wont to gather with his own hands. Who could have impeached Parasetis for the poisoning of the one side of the knife she carried with her, and keeping the other side clean, so that herself did eat of the same piece of meat that they did whom she did impoison? These cases are infinite, and need not to be spoken of the secrecy of impoisonment; but wise men must take upon them, in these secret cases, Solomon's spirit, that, when there could be no witnesses, collected the act by the affection. But yet we are not at our cause, for that which your Lordships are to try is not the act of impoisonment, for that is done to your hands; all the world by law is concluded to say that Overbury was poisoned by Weston; but the question before you is, of the procurement only, and, as the law termeth it, as accessary before the fact; which abetting is no more but to do or use any act or means which may aid or conduce to the impoisonment. So that it is not the buying nor the making of the poison, nor the preparing nor confecting nor commixing of it, nor the giving or sending or laying of the poison, that are the only acts that do

amount unto the abetment; but if there be any other act or means done or used to give opportunity of impoisonment, or to facilitate the execution of it, or to stop or divert any impediments that might hinder it, and that it be with an intention to accomplish and achieve the impoisonment—all these are abetments and accessaries before the fact. As, for example, if there be a conspiracy to murder a man, as he journeyeth on the way, by invitation, or by colour of some business; and another taketh upon him to dissuade some friend of his company, that he is not strong enough to make his defence; and another hath a part to hold him in talk till the first blow be given: all these, my Lords, without scruple, are accessaries to the murder, although none of them give the blow nor assist to give the blow. My Lords, he is not the hunter alone that lets slip the dog upon the deer, but he that lodgeth him and hunts him out, or sets a train or trap for him that he cannot escape, or the like. But this, my Lords, little needeth in this case; for such a chain of acts of impoisonment as this, I think, was never heard nor seen. And thus much of the nature of the proofs.

To descend to the proofs themselves, I shall keep this course: First, I will make a narration of the fact itself; secondly, I will break and distribute the proofs as they concern the prisoner; and, thirdly, according to the distribution, I will produce them, and read them, to use them. So that there is nothing that I shall say but your Lordship shall have three thoughts or cogitations to answer. First, when I open it you may take your aim; secondly, when I distribute it you may prepare your answers without confusion; and, thirdly, when I produce the witnesses, or the examinations themselves, you may again ruminate and re-advise to make your defence. And this I do because your memory and understanding may not be oppressed or over-loaden with length of evidence or with confusion of order; nay more, when your Lordship shall make your answer in

your time, I will put you in mind where cause shall be of your omission.

First, therefore, Sir T. Overbury, for a time, was known to have great interest and strait friendship with my Lord of Somerset, both in his meaner fortunes and after; insomuch that he was a kind of oracle of direction unto him; and if you will believe his own vaunt, (being indeed of an insolent and thrasonical disposition,) he took upon him that the fortunes, reputation, and understanding of this gentleman (who is well known to have an able teacher) proceeded from his company and counsel: and this friendship rested not only in conversation and business at Court, but likewise in communication of secrets of State; for my Lord of Somerset, exercising at that time by His Majesty's special favour and trust the office of Secretary, did not forbear to acquaint Overbury with the King's packets and despatches from all parts of Spain, France, and the Low Countries; and this then not by glimpses, or now and then rounding in the ear for a favour, but in a settled manner; packets were sent, sometimes opened by my Lord, sometimes unbroken unto, Overbury, who perused them, copied them, registered them, made table-talk of them, as they thought good. So I will undertake the time was when Overbury knew more of the secrets of State than the Council-table did. Nay, they were grown to such inwardness, as they made a play of all the world besides themselves, so as they had ciphers and jargons for the King and Queen and great men of the realm; things seldom used, but either by Princes to their confederates, or, at the least, by such as practise and work against, or, at the least, upon Princes. But, understand me, my Lord, I shall not charge you with disloyalty at this day; and I lay this for a foundation, that there was great communication of secrets between you and Sir T. Overbury, and that it had relation to matters of State and the great causes of this kingdom. But, my Lords, as it is a principle in nature that the best things are in their corruption the worst, and the

sweetest wine maketh the sourest vinegar, so it fell out with them, that this excess, as I may say, of friendship, ended in mortal hatred on my Lord of Somerset's part. I have heard my Lord Steward say sometimes in the Chancery that frost and fraud end foul; and I may add a third, and that is, the friendship of ill men, which is truly said to be conspiracy and not friendship. For it fell out some twelve months or more before Overbury's imprisonment in the Tower that the Earl of Somerset fell into an unlawful love towards that unfortunate lady the Countess of Essex, and to proceed to a marriage with her. This marriage and purpose did Overbury mainly impugn, under pretence to do the true part of a friend, for that he accounted her an unworthy woman; but the truth was, Overbury, who (to speak plainly) had little that was solid for religion or moral virtue, but was wholly possessed with ambition and vain-glory, was loth to have any partners in the favour of my Lord of Somerset, and especially not any of the house of the Howards, against whom he had always professed hatred and opposition. And, my Lords, that this is no sinister construction, will appear to you when you shall hear that Overbury made his brags that he had won him the love of the lady by his letters and industry; so far was he from cases of conscience in this point. And certainly, my Lords, howsoever the tragical misery of this poor gentleman, Overbury, might somewhat obliterate his faults, yet, because we are not upon point of civility, but to discover the face of truth, before the face of justice, for that it is material to the true understanding of the state of this cause, Overbury was naught and corrupt: the ballads must be mended for that point. But to proceed: when Overbury saw that he was like to be possessor of my Lord's grace, which he had possessed so long, and by whose greatness he had promised himself to do wonders, and being a man of an unbounded and impudent spirit, he began not only to dissuade but to deter him from the love of that lady; and, finding

him fixed, thought to find a strong remedy; and, supposing that he had my Lord's head under his girdle, in respect of communications of secrets of State, as he calls them himself secrets of nature, therefore dealt violently with him, to make him desist, with menaces of discovery and the like. Hereupon grew two streams of hatred upon Overbury—the one from the lady, in respect that he crossed her love and abused her name (which are furies in women); the other of a more deep nature from my Lord of Somerset himself, who was afraid of Overbury's nature, and, if he did not break from him and fly out, he would wind into him and trouble his whole fortunes. I might add a third stream of the Earl of Northampton's ambition, who desired to be first in favour with my Lord of Somerset, and knowing Overbury's malice to himself and to his house, thought that man must be removed and cut off: so as certainly it was resolved and decreed that Overbury must die. That was too weak, and they were so far from giving way to it, as they crossed it: there rested but two ways of quarrel—assault and poison. For that of assault, after some proposition and attempt, they passed from it, as a thing too open, and subject to more variety of shame. That of poison likewise was an hazardous thing, and subject to many preventions and caution, especially to such a working and jealous brain as Overbury had, except he was first fast in their hands; therefore the way was first to get him into a trap and lay him up, and then they could not miss the mark. And, therefore, in execution of this plot, it was concluded that he should be designed to some honourable employment in foreign parts, and should underhand by my Lord of Somerset be encouraged to refuse it; and so upon contempt, he should be laid prisoner in the Tower, and then they thought he should be close enough, and death should be his bail. Yet they were not at their end, for they considered that if there were not a fit Lieutenant of the Tower for their purpose, and likewise a fit Underkeeper for Overbury, first,

they should meet with many impediments in the giving and exhibiting of the poison; secondly, they should be exposed to note and observation that might discover them; and, thirdly, Overbury, in the mean time, might write clamorous and furious letters to his friends, and so all might be disappointed. And, therefore, the next link of the chain was to displace the then Lieutenant Wade, and to place Elwes, a principal abettor to the impoisonment; to displace Cary, that was Underkeeper in Wade's time, and to place Weston, that was the actor in the impoisonment; and this was done in such a while that it may appear to be done as it were in a breath. Then when they had this poor gentleman in the Tower, close prisoner, where he could not escape nor stir, where he could not feed but by their hands, where he could not speak nor write but through their trunks, then was the time to act the last day of his tragedy. Then must Franklin, the purveyor of the poisons, procure five, six, seven several poisons, to be sure to hit his complexion. Then must Mrs. Turner, the lay-mistress of the poisons, advise what works at present, and what at distance. Then must Weston be the tormentor, and chase him with poison after poison—poison in salt-meats, poison in sweet-meats, poison in medicines and vomits—until at last his body was almost come by use of poisons to the state of Mithridates's body, by the use of treacle and preservatives, that the force of the poisons was blunted upon him; Weston confessing, when he was chid for not despatching him, that he had given him enough to poison twenty men. And, lastly, because all this asked time, courses were taken by Somerset both to divert all the true means of Overbury's delivery, and to entertain him with continual letters, partly with hopes and protestations for his delivery, and partly with other fables and negotiations—somewhat like some kind of persons which keep in a tale of fortune-telling, when they have a felonious intent to pick pockets and purses. And this is the true narration of this act which I have summarily recited.

Now for the distribution of the proofs: there are four heads to prove you guilty, whereof two are precedent to the impoisonment, the third is present, and the fourth is following or subsequent; for it is in proofs, as it is in lights, there is a direct light, and there is a reflection of light, and a double light. The first head or proof is, that there was a root of bitterness, a mortal malice or hatred, mixed with a deep and bottomless mischief, that you had to Sir T. Overbury. The second is, that you were the principal actor, and had your hand in all those acts which did conduce to the impoisonment, and gave opportunity to effect it, without which the impoisonment could never have been, and which could seem to tend to no other end but to the impoisonment. The third is, that your hand was in the very impoisonment itself, that you did direct poison, and that you did deliver poison, and that you did continually harken to the success of the impoisonment, and that you spurred it on, and called for despatch when you thought it lingered. And, lastly, that you did all things after the impoisonment, which may detect a guilty conscience, for the smothering of it, and the avoiding of punishment for it, which can be but of three kinds. That you suppressed, as much as in you was, testimony; that you did deface, destroy, clip, and misdate all writings that might give light to the impoisonment; and you did fly to the altar of guiltiness, which is a pardon of murder, and a pardon for yourself, and not for yourself.

In this, my Lord, I convert my speech unto you, because I would have you alter the points of your charge, and so make your defence the better. And two of these heads I have taken to myself, and left the other to the King's two Serjeants. For the first main part, which is the mortal malice coupled with fear that was in you to Sir T. Overbury, although you did palliate it with a great deal of hypocrisy and dissimulation, even to the very end, I will prove it, my Lord Steward, the root of his hate was that

which cost many a man's life, that is, fear of discovering secrets; I say, of secrets of a dangerous and high nature: wherein the course that I will hold shall be this. I will show that a breach and malice was betwixt my Lord and Overbury, and that it burst forth into violent threats and menaces on both sides. Secondly, that these secrets were not of a light, but of an high nature. I will give you the elevation of the pole: they were such as my Lord of Somerset had made a vow that Overbury should neither live in court nor country; that he had likewise opened himself so far, that "either he or himself must die for it:" and of Overbury's part, he had threatened my Lord, "that whether he did live or die, my Lord's shame should never die," but that "he would leave him the most odious man in the world;" and farther, that my Lord was like enough to repent where Overbury wrote, which was in the Tower of London—he was a prophet in that: so there is the highest of the secret. Thirdly, I will show you that all the King's business was, by my Lord, put into Overbury's hands, so as there is work enough for secrets whatsoever; they write them, and, like Princes, they had their confederates, their ciphers, and their jargons. And, lastly, I will show you that it was but a toy to say the malice was only in respect that he spake dishonourably of the lady, or for doubt of breaking the marriage, for that Overbury was coadjutor to that love, and the Lord of Somerset was as deep in speaking ill of the lady as Overbury; and again, it was too late for that matter, for the bargain of the match was then made and past; and if it had been no more than to remove Overbury for disturbing the match, it had been an easy matter to have landed over Overbury, for which they had a fair way, but that would not serve. And, lastly, "*Periculum periculo vincitur*;" to go so far as an impoisonment, must have a deeper malice than flashes, for the cause must have a proportion in the effect.

For the next general head or proof, which consists in the

acts preparatory, or middle acts, they are in eight several points of the compass, as I may term them.

First, there were divers devices and projects to set Overbury's head on work, to despatch him, and overthrow him, plotted between the Countess of Essex, and the Earl of Somerset, and the Earl of Northampton, before they fell upon the impoisonment; for always before men fix upon a course of mischief, there will be some reflection; but die he must one way or other. Secondly, that my Lord of Somerset was principal practiser, I must speak it, in a most perfidious manner to set a trap and train for Overbury, to get him into the Tower, without which they durst not attempt the impoisonment. Thirdly, that the placing of the Lieutenant Elwes, one of the impoisoners, was done by my Lord of Somerset. Fourthly, that the placing of Weston, the Underkeeper, who was the principal impoisoner, and displacing of Cary, and the doing all this within the space of fifteen days after Overbury's commitment, was by the means and countenance of my Lord of Somerset; and these were the active instruments of the impoisonment, and this was a business the lady's power could not reach unto. Fifthly, that because there must be a cause of this tragedy to be acted, and chiefly because they would not have the poisons work upon the sudden, and for that the strength of Overbury's nature, on the very custom of receiving the poisons into his body, did overcome the poisons that they wrought not so fast, therefore Overbury must be held in the Tower, as well as he was laid in: and as my Lord of Somerset got him into the trap, so he keeps him in, and amuseth him with continual hope of liberty, but diverted all the true and effectual means of his liberty, and makes light of his sickness and extremities. Sixthly, that not only the plot of getting Overbury into the Tower, and the devices to hold and keep him there, but the strange manner of the close keeping of him, being in but for a contempt, was by the device and means of my Lord of Somer-

set, who denied his father to see him, denied his servants that offered to be shut up close prisoners with him, and in effect handled it so that he made him close prisoner to all his friends, and exposed to all his enemies. Seventhly, that all the advertisement the lady received from time to time, from the Lieutenant or Weston, touching Overbury's state of body and health, were ever sent nigh to the Court, though it were in progress, and that from my lady; such a thirst and listening he had to hear that he was despatched. Lastly, that there was a continual negotiation to set Overbury's head on work that he should make some offer to clear the honour of the lady, and that he should be a good instrument towards her and her friends; all of which was but entertainment; for your Lordship shall see divers of my Lord of Northampton's letters (whose hand was deep in this business), written, I must say, in dark words and clauses, that there was one thing pretended and another thing intended; that there was a real charge, and somewhat not real—a main drift and dissimulation. Nay, farther, there be some passages which the Peers, in their wisdom, will discern to point directly at the impoisonment.

And now for producing of my proofs, I will use this course: those examinations that have been taken upon oath shall be here read; and the witnesses also I have caused to be here, that they may be sworn, and to justify or deny what they hear read, and to diminish or add to their examinations; and besides that, my Lord of Somerset, and you my Lords the Peers, may ask them what farther questions you please.

H. PAYTON, servant of Sir T. Overbury, now of his father, examined before the Lord Chief Justice.

He saw a letter of his master's, whose hand he knew, to my Lord of Somerset, wherein were these words, "If I die, my blood lie upon you." And in that or another letter

there was this clause, "My Lord, you are now as good as your word, you have kept your vow to me." Moreover, that in the privy gallery at Whitehall, my Lord of Somerset coming late to his chamber, met there Sir T. Overbury. "How now?" said my Lord, "are you up yet?" "Nay," answered Sir T. Overbury, "what do you here at this time of night? Will you never leave the company of that base woman? And seeing you do so neglect my advice, I desire that to-morrow morning we may part; and that you will let me have that portion you know is due to me; and then I will leave you free to yourself, to stand on your own legs." My Lord of Somerset answered, "His legs were strong enough to bear himself," and so departed in great displeasure. And to his certain knowledge they were never perfectly reconciled again. And being asked how he heard this discourse, he said, it was in the dead of the night, and he, being in a room within the gallery, heard all that passed.

H. Payton.—I acknowledge every part of this examination to be true; and more, that my master being in the Tower, he sent a letter by Weston to me, to carry to my Lord; and withal to deliver my Lord this message, that that powder he had sent him had made him very sick, and given him in one night sixty stools, besides vomits. This letter I carried to the Court, and delivered to Mr. Pawlins to carry in to my Lord, who was then in his chamber. My Lord presently came out, asked me how my master did. I told him very sick, and withal this message how the physic had wrought with him. My Lord smiled, and cried "Pish!" and so turned him away.

L. DAVIS, sometime servant of Sir T. Overbury, now of Sir H. May; his examination before the Lord Coke.

Saith that he hath heard his master say, that he would have gone ambassador, but that my Lord of Rochester dissuaded him. He hath seen some letters of Sir T. Over-

bury's, wherein he writ that the Lord of Rochester was even with him ; but he thinks he (*i. e.* the Lord Rochester) never saw those passages.

Lord of Somerset.—I pray you, my Lords, note : he says, I never saw those passages.

Mr. Attorney.—It is true ; for those letters were lost, but after found by him, who knew them to be his master (Sir T. Overbury's) hand.

Sir Thomas Overbury's First Letter to my Lord Somerset.

“ Is this the fruit of my care and love to you ? Be these the fruits of common secrets, common dangers ? As a man you cannot suffer me to lie in this misery ; yet your behaviour betrays you. All I entreat of you is, that you will free me from this place, and that we may part friends. Drive me not to extremities, lest I should say something that you and I both repent. And I pray God that you may not repent the omission of this my counsel in this place, whence I now write this letter.”

Lord Wentworth.—How did you know these letters were sent from him to my Lord of Somerset ?

Lord Coke.—They were found in a cabinet, among some other things, left in trust by my Lord of Somerset with Sir R. Cotton, and thus they were discovered : Sir R. Cotton, fearing searches, delivers them to a friend of his in Holborn, one Mrs. Farneforth ; she, to the intent they might be safely kept, sent them to a merchant's house in Cheapside, where some nine months before she had lodged, and desired that they might safely be kept for her, pretending they were some writings that concerned her jointure. On St. Thomas's Day she herself comes to have them again, saying she must carry them to her counsel to peruse. He said, “ If you will suffer me to open it before you, and that there be nothing else, you shall have them.” But she by no means would consent to the breaking of it open. Then he answered, “ It is a troublesome time ; I will go

to my Lord Chief Justice, and if he find no other writings than such as concern you, you shall have them again." So coming to my chamber, and not finding me within, (for I was gone to St. Paul's to the sermon,) he went to my Lord Zouch, one of the appointed commissioners for this cause; who himself alone would not break it up, but came to St. Paul's to me, where in a by-room we broke it up, and in it found these letters, and divers from my Lord of Northampton, besides many other papers.

Lord Zouch.—I affirm this relation of my Lord Coke's to be true.

Sir Thomas Overbury's Second Letter to my Lord Somerset.

"This comes under seal, and therefore shall be bold. You told my brother Lidcote that unreverend style might make you neglect me. With what face could you do this, who know you owe me for all the fortune, wit, and understanding that you have?" [Here were inserted some borrowed names.]

Mr. Attorney.—Under these false names they meant great persons—Julius, the King; Dominic, my Lord of Northampton; Unclius, my Lord of Canterbury.

The rest of the Letter.

"And yet pretend the reason why you seek not my liberty to be my unreverend style; whilst, in the meantime, you sacrifice me to your woman, still holding friendship with those that brought me hither. You bade my brother Lidcote keep my desire of liberty secret. Yet this shall not serve your turn; for you and I, ere it be long, will come to a public trial of another nature—I upon the rack, and you at your ease; and yet I must say nothing! when I heard (notwithstanding my misery) how you went to your woman, curled your hair, preferred Gibbe into the bed-chamber, and in the meantime send me nineteen projects how I should cast about for my liberty; and give me a

long account of the pains you have taken, and then go out of town. I wonder to see how you should neglect him, to whom such secrets of all kinds have passed ; and suffer my mother and sisters to lie here in town, expecting my liberty ; my brother Lidcote to be in a manner quite overthrown, in respect of my imprisonment ; and yet you stand stupid : nor have neither servant nor friend suffered to come to me. Well, all this vacation I have written the story betwixt you and me. How I have lost my friends for your sake ; what hazard I have run ; what secrets have passed betwixt us ; how after you had won that woman by my letters, and then you concealed all your after-proceedings from me ; and how upon this there came many breaches betwixt us ; of the vow you made to be even with me, and sending for me twice that day that I was caught in the trap, persuading me that it was a plot of mine enemies to send me beyond sea ; and urging me not to accept it, assuring me to free me from any long trouble. On Tuesday I made an end of this, and on Friday sent it to a friend of mine under eight seals ; and if you persist still to use me thus, assure yourself it shall be published. Whether I live or die, your shame shall never die, but ever remain to the world, to make you the most odious man living."

H. Payton and L. Davis.—We both, upon our oaths, know this to be Sir T. Overbury's hand.

SIMCOCKS' Examination before my Lord Coke, writ with his own hand.

He says that Weston many times, when Sir T. Overbury was in the Tower, told him that my Lord of Somerset charged him to look to Overbury well ; for if ever he came out, one of us two must die.

Lord of Somerset.—I would fain know whether Weston were examined or no.

Lord Wentworth.—How long is it since this familiar acquaintance betwixt Simcocks and Weston ?

Simcocks.—He and I were of ancient and familiar acquaintance long since.

Mr. Attorney.—Weston had continually access to my Lord, had rewards from him. My Lord charged him to look to Overbury well. It could not be his marriage that made him so much fear; but what the secrets were that caused it, it is not the work of this day. Now to show that the greatest matters of state were communicated to him, read Davis.

L. Davis examined.—There was a packet of letters and sealed, which, as he takes, came from Sir J. Digby, directed to the King; and his master (Sir T. Overbury) opened it, took brief notes for my Lord of Somerset, and sealing it again, sent both the notes and packet to him. Another of this he saw his master have at Newmarket from Sir Thomas Edmundes to the King, out of which, after he had taken extracts, he sealed it up again, and sent both back by this examinant to my Lord Somerset.

Mr. Attorney.—I will not now, my Lords, endeavour to press the greatness of this offence. But I urge it thus, that you may see there were no mean secrets betwixt my Lord and Sir T. Overbury, that might rather cause him to fear him than the hindrance of his marriage: if that had been it alone, his going beyond sea would have served the turn.

Lord of Somerset examined, says, that amongst many other characters for names that passed between Sir T. Overbury and him, Simonist was for Sir H. Nevil, Wolfy for the now Lord Treasurer, Ductius for my Lord of Canterbury.

Mr. Attorney.—In good faith these two made plays of all the world besides themselves; but though it were a play then, it hath proved tragical since.

A Letter of my Lord of Northampton to my Lord of Somerset.

“ Now, all is concluded about the form of the non-altity,

I doubt not but God will bless the next bargain. I hope hereafter to find better pen and ink in this lady's chamber. Be still happy." Underneath subscribed "H. Northampton," and "I am witness to this bargain, Fra. Howard."

This letter was shewed my Lord of Somerset, and he confessed the hand.

Mr. Attorney.—For the second branch that I mean to follow, and that is, that you used the means to expose him to the Tower, and there to keep him close prisoner. It is a chain of eight links, and shall be shewed you upon eight points of the compass. But before we come to these, it is to be considered, that, as no consultation is ripe in an hour, so no more was there; for they purposed at first to have taken away his life by assault. And Franklin tells you the cause of this malice.

FRANKLIN examined before my Lord Coke, but not upon oath.

He saith, that my Lady of Somerset said the cause of this hatred of Sir T. Overbury was, that he would pry so far into my Lord of Somerset that he would put him down.

Sir D. WOODES examined before Lord Coke.

He saith, my Lady Somerset knowing there was some discontent betwixt Overbury and him, in respect of a suit that he crossed him in, told him that if he would kill Sir T. Overbury he should have 1000*l.*, and besides she would make his greatest enemy to become his greatest friend; and he knew no enemy he had in Court but my Lord of Rochester. He answered, that if my Lord of Rochester would give him his hand, or but pass his word, if he did it, that he should escape and have his pardon, he would do it. Upon this she paused, and desired some time to give her answer; and when he came again to her she told him that could not be; but promised all favour possible unto him, and warranted him to go on upon her life.

Lord of Somerset examined.—Saith, it was once resolved somebody in Court should fall out with Overbury, and offer him some affront; but that was not followed.

Mr. Attorney.—Note, my Lords, he does not say it was disliked. And now to the puddle of blood; the first link of which is, that the means to entrap Overbury for the Tower was by the means of my Lord of Somerset.

SIR DUDLEY DIGGS sworn.

Sir T. Overbury once told me that he went to undertake the employment offered him to go beyond sea; but afterwards he sent me word by Sir R. Mansel that he had changed his mind. But Sir R. Mansel told me farther, that he saw a letter from the Lord of Somerset to Overbury that dissuaded him from that course. Seeing Mr. Attorney hath called me so far out of the country for this small testimony, I wish Sir R. Mansel were here to justify it.

My Lord of Somerset's Declaration in writing to the King.

“Being told by my Lord Chief Justice that I was indicted, and was shortly to expect my arraignment, I did not then believe him, for I did not look for that way. Your Majesty hath three kingdoms wherein to exercise the prerogative of your power, and but few that taste of the first of your favours, in which number I did think myself, if not the first, yet inferior to very few. And having committed no offence against your person nor the state, I hope your Majesty will not for this bring me to a public trial, which for my reputation's cause I humbly desire to avoid. Grace truly given may be a benefit; for it is not enough to give life and not to save reputation. But if I must come to my trial, knowing the presumptions may be strong against me in respect I consented to and endeavoured the imprisonment of Sir T. Overbury (though I designed it for his reformation, not his ruin), I therefore desire your Majesty's mercy, and that you will be pleased to give me leave to dispose of

my lands and goods to my wife and child, and graciously to pardon her, having confessed the fact. For myself, being uncertain how I shall be judged upon presumptions, I humbly desire that in the meantime you will be pleased to give my Lord Hays and Sir Robert Carr leave to come to me.

Mr. Attorney.—The second link is, how that Elwes came to be Lieutenant of the Tower by your means, and yet that must have a colour; my Lord of Shrewsbury and Lord Chamberlain must prefer him to you as their friend, though it was resolved before he should have the place.

Sir J. Elwes examined, but not on oath.—He saith, Sir T. Monson told him that Wade was to be removed, and that if he succeeded Sir W. Wade he must bleed, that is, give 2000*l*. And ten days after Wade was removed he came into the place, and paid 1400*l*. of the money at his uncle (Alderman Elwes's) house to Dr. Campian.

Mr. Attorney.—You may see they had ciphers for money. He must bleed! A strange presage! And as it is impossible to serve God and Mammon, so in that kind it is hard to serve a King.

Sir Thomas Monson examined, but not on oath.—Saith, my Lord of Northampton, upon the displacing of Wade, moved the King for Sir J. Elwes; and that he directed Sir J. Elwes to go to the Lords of Shrewsbury and Pembroke to move my Lord of Somerset to speak for him to the King.

Sir Jervis Elwes's examination.—When it was resolved Wade should be removed, and he to succeed him, then he was advised to desire my Lord of Somerset to move for him, which he did accordingly; but took that only to be but for a colour, because it was resolved before.

Mr. Attorney.—Now the third link concerns the placing of Weston for his keeper.

Sir Thomas Monson examined.—Saith he recommended Weston to the service of Sir J. Elwes, and to keep Sir T.

Overbury, upon the Countess of Somerset's entreaty; and farther saith that my Lord of Northampton was acquainted with the placing of him.

R. Weston examined.—My Lord and Lady Somerset gave good words of him to the Lieutenant.

Lord of Somerset examined.—He denies the knowledge of Weston, either before his coming into the Tower or since.

Simcocks examined.—Weston, during the time Sir T. Overbury was in his keeping, came often to my Lord, had much money of him, and wondered Sir T. Overbury had so good an opinion of my Lord; and thought he had not so much wit as the world esteemed, for there was no man hindered his liberty but he; and whenever he came to my Lord he might use such means as Rawlins his man must not know.

[In this interim a scaffold broke, and there was a great noise and confusion; but after silence was proclaimed, all hushed and quiet.]

Mr. Attorney.—All the confessions of Weston were taken before conviction; and these two last witnesses are merely to his denying the knowledge of Weston. Now for the fourth link, which is the placing and displacing officers.

Sir Jervis Elwes examined.—Saith, that Overbury was committed April 30th, and May 6th himself came to be Lieutenant of the Tower; and that Weston was preferred to be Sir T. Overbury's keeper May 7th; and that all this time he served he never had wages from him.

Mr. Attorney.—Now the fifth link or point of the compass I promised to show you was, that this must not be done suddenly, but by degrees; and so he must be poisoned leisurely, to avoid suspicion. And in the mean space you entertained his father and mother with frivolous hopes; and yet indeed hindered and made opposition (but underhand) to all the means that were used for his delivery.

Mr. Overbury, the father, sworn.—After my son was com-

mitted I heard that he was very sick. I went to the Court and delivered a petition to the King; the effect whereof was, that in respect of my son's sickness some physicians might have access unto him. The King answered that his own physician should go to him; and then instantly sent him word by Sir W. Button that his physician should presently go. Upon this I only addressed myself to my Lord of Somerset, and none else, who said my son should be presently delivered, but dissuaded me from preferring any more petitions to the King; which notwithstanding I (seeing his freedom still delayed) did deliver a petition to the King to that purpose, who said I should have a present answer. And my Lord of Somerset told me he should be suddenly relieved; but with this, that neither I nor my wife must press to see him, because that might protract his delivery; nor deliver any more petitions to the King, because that might stir his enemies up against him. And then he wrote a letter to my wife, to dissuade her from any longer stay in London.

My Lord of Somerset's Letter to Mrs. Overbury.

“Mrs. Overbury,—Your stay here in town can nothing avail your son's delivery; therefore I would advise you to retire into the country, and doubt not before your coming home you shall hear he is a freeman.”

Mr. Overbury.—Then after my son's death he writ another letter to me.

My Lord of Somerset's Letter to Mr. Overbury.

“Sir,—Your son's love to me got him the malice of many, and they cast those knots on his fortune that have cost him his life: so, in a kind, there is none guilty of his death but I; and you can have no more cause to commiserate the death of a son than I of a friend. But though he be dead you shall find me as ready as ever I was to do all the courtesies that possibly I can to you and your wife, or

your children. In the meantime I desire pardon from you and your wife for your lost son, though I esteem my loss the greater. And for his brother that is in France, I desire his return that he may succeed his brother in my love."

Mr. Attorney.—By this you see my Lord's dissimulation. And I think he was a piece of a lawyer, by his insinuating with his next kindred for fear of appeals. Now to come to the sixth link, which shows how light my Lord of Somerset made both of Sir T. Overbury's fortunes and sickness. Read Simcocks.

Simcocks examined.—Saith that Weston told him he wondered Sir T. Overbury should have so great confidence in my Lord of Somerset, and think that he loved him so well; for he knew that he could not abide him, and thought of nothing less than his liberty.

Sir John Lidcote sworn.—Saith, he desired my Lord of Somerset that either he or Sir R. Killigrew might have leave to see Sir Thomas Overbury in his sickness, which my Lord obtained from the King. And so they had a warrant from my Lord of Northampton and some other Counsellors to see him; and found him very sick in his bed, his hand dry, his speech hollow. And at this time he desired me to write his will; I proposed to come to him the next day. Now being ready to depart, the Lieutenant going out before, Overbury asked me softly this question, whether Somerset juggled with him or not? But I then told him, as I believed, that I thought not. But the Lieutenant looking back, and perceiving that some whispering had passed, swore that I had done more than I could justify. But afterwards, coming to press my Lord of Somerset about Sir T. Overbury, I perceived he dealt not plainly with him. And once speaking with my Lord about him, he gave a counterfeit sigh, (as this deponent conceived,) for at that instant he smiled in my face.

Mr. Attorney.—The seventh link is to show you the manner of his keeping, which was close prisoner in the

Tower, his offence being only a contempt; and who was the author of this. Read Sir Thomas Monson.

Sir Thomas Monson examined, but not upon oath.—Saith, my Lord of Northampton and my Lord of Somerset gave directions to the Lieutenant of the Tower to keep him close prisoner.

L. Davis examined.—Saith, that he was a suitor to my Lord of Somerset, that he might wait upon his master Sir T. Overbury in the Tower, though he were shut up with him. But my Lord answered, he shortly purposed to procure his total liberty, and this might hinder it.

Mr. Attorney.—Now the eighth and last link is, in the interim that Overbury in the Tower was plied with poisons, my Lord thirsted after the news, to know what became of him, and continual posts went between him and my lady; and all this while bore him in hand with other pretences.

Franklin (but not upon oath).—Saith, that being with my Lady Essex, she told him that she had that day received a letter from my Lord of Rochester, wherein he writ, that if Weston did not presently dispatch, Sir T. Overbury would be out.

Sir Jervis Elwes examined.—Saith, he received divers letters from my Lady Essex, wherein she desired to know how Overbury did, that she might certify to the Court.

Lord of Somerset examined.—Saith, that there passed many letters betwixt my lady and him, but not concerning Overbury. But then desired that this point might be altered; for it might be that some letters concerning Overbury might have then passed betwixt them.

Mr. Attorney.—My Lord knew not whether any of these letters were extant, and therefore desired that this might be altered.

Loubell, an apothecary, a Frenchman.—Saith, that coming to my Lord of Somerset, he asked him of Overbury, and how he did? and he said, “Ill.” Another time also he sent for him to inquire about Overbury; and then he answered

him, that he was ill, but hoped he might recover. "What!" says my Lord, "do you think he would recover if he were at liberty?" And he answered, "Yes." Again my Lord sent for him a third time; and carrying him into the gallery at Whitehall, asked him how Overbury did. He answered, he was very sick, and farther added, he found him ill before the 25th of June, that he came to him.

Lord of Somerset examined.—Denies that ever he saw Loubell but once at Theobalds.

Mr. Attorney.—Here again you see my Lord falsified; but it seems, imagining or not knowing that Loubell could say more against him than he hath done, he denied the knowledge of him, as he did of Weston.

Lord Coke.—It was doubted Loubell might be a delinquent; and therefore I durst not examine him upon oath, no more than I did Franklin. But when in their testimony they accuse themselves, it is as strong as if upon oath.

Mr. Attorney.—Now in respect Overbury had a working brain, my Lord of Northampton must in show negotiate about his delivery, and the terms of his coming out, whilst they intended his poisoning: that was real, and the other but in pretence.

*My Lord of Northampton's First Letter to my Lord
of Somerset.*

"In this business concerning Overbury there must be a main drift, and a real charge: you may imagine the meaning."

*My Lord of Northampton's Second Letter to my Lord
of Somerset.*

"I yesterday spent two hours in prompting the Lieutenant, with as great caution as I could, and find him to be very perfect in his part. And I long exceedingly to hear his report of this adventure."

*My Lord of Northampton's Third Letter to my Lord
of Somerset.*

“You need not use many instruments, so long as I am in town, with the Lieutenant.”

*My Lord of Northampton's Fourth Letter to my Lord
of Somerset.*

“I cannot deliver with what caution and discretion the Lieutenant hath undertaken Overbury. But for his conclusion, I do and ever will love him the better; which was this, that either Overbury shall recover, and do good offices betwixt my Lord of Suffolk and you, which if he do not, you shall have reason to count him a knave; or else, that he shall not recover at all, which he thinks the most sure and happy change of all; for he finds sometimes from Overbury many flashes of a strong affection to some enemies of his.”

Lord of Somerset.—I acknowledge these letters to be my Lord of Northampton's; and all those that I sent to him were delivered me after his death by Sir R. Cotton: all which the evening before my commitment to the Dean of Westminster's, I burnt.

Mr. Attorney.—These letters of Northampton were found in the box Sir R. Cotton gave Mrs. Farnforth. And here my part ends, and that that rests behind I leave to the two Serjeants.

Lord High Steward.—My Lord, you have heard what hath been urged against you, and may imagine that there rests much behind, and therefore you had best confess the truth; otherwise you will but more and more wind in yourself.

Lord of Somerset.—My Lord, I came with a resolution to defend myself.

After this my Lord High Steward and the rest of the Lords retired themselves.

Serjeant Montague.—May it please your Grace, my Lord High Steward of England, it falls to my part to discover those secrets that were concurrent and present with the murder of Sir T. Overbury. And there be three things that make evidently that my Lord of Somerset was the principal procurer: 1. A powder that was sent Sir T. from your own hand, which was poison and taken by him; 2. Poison in tarts, which you occasioned to be sent; 3. That you thirsted after the success, and wondered that he was no sooner dispatched. How the first general light of this poisoning came out, Mr. Attorney yesterday excellently observed that it was by a compliment; so now I shall show how out of the compunction of an offender's heart these came to be discovered. Franklin confesses the poisons he bought for this purpose, and the trial that he made of them before they were sent. And 1. For the powder, it was sent in a letter written with my Lord's own hand to Overbury. And you writ that it would make him a little sick, (which it did in a high degree;) and that upon this you would take occasion to speak for him to the King. And this letter, with the powder, you sent to him by Davis; and the powder was poison. 2. For the poisoned tarts: at first you sent them good, to disguise the bad; but after came the poisoned tarts which you sent him. And to make this appear that they came from you, continual posts ran between you and my Lady; and she writes to the Lieutenant, "I was bid to tell you, that in the tarts and jellies there are *letters*; but in the wine none. And of that you may take yourself, and give your wife and children; but of the other, not. Give him these tarts and jelly this night, and all shall be well." And it appears that the *letters* did signify poison. 3. The third charge that I lay upon you, is, that you writ to my Lady that you wondered these things were not dispatched. She presently sent for Franklin, and shewed him your letters; which he read, and remembers the words. She then also sent for Weston to

despatch him quickly ; who answered, that he had already given him as much as would poison twenty men. And in all these things, my Lord, I shall prove you as guilty as any whosoever hath been formerly arraigned ; and Weston, upon his arraignment, affirmed all these things to be true. Now to the proof. He sends a petition to the Lord Coke, to desire to speak with him, the very night before Elwes's arraignment, he knowing nothing of it ; and says that his conscience troubles him so that he cannot sleep, and therefore desires to reveal something to him ; and that until he had done it, he could never be at quiet.

Franklin examined.—Mrs. Turner desired him to buy some of the strongest poisons he could get ; which he did, and brought them to Mrs. Turner and my Lady, and at that time they both swore him to secrecy. And afterwards he perceived that these poisons were sent to the Tower ; and amongst the rest a kind of white powder called arsenic, which she told him was sent Overbury in a letter ; and after showed him and told him of many more poisons that were sent and to be sent by Weston to Overbury. And those poisons which my Lady showed him were wrapped in a paper written with a Roman hand. And they tried some of the poisons upon a cat or a dog, which was wonderfully tormented and died.

Weston examined.—My Lady told him that he should be well rewarded ; but before she could procure that, the fact must be done ; and that he had already given him as many poisons as would poison twelve men.

Lord of Somerset examined.—Saith, that he caused a vomit to be sent him at his own request, which was a white powder ; and it was the same that he had had before of Sir R. Killegrew, and sent by Rawlins ; and it may be that this second sent by Davis was in a letter.

L. Davis examined.—Saith, that three weeks after Sir Jervis Elwes came to be Lieutenant of the Tower, my Lord sent, in a letter by him, a white powder to Sir T. Overbury ;

and that it would make him a little sick, so he might have the better opportunity to speak for him to the King ; and he saw this letter. Next day Weston told him how sick Overbury had been, and showed him what loathsome stuff he had vomited, which he would have had to have carried to my Lord Somerset ; but Weston would not let him, saying, it was an unfit sight to show him.

H. Payton examined.—Saith, that this powder gave Sir Thomas fifty or sixty stools and vomits for four or five days.

Serjeant Montague.—Four several juries have found that this powder was poison, and of this poison Sir T. Overbury died. Now for the proof of the poisoned tarts.

Lady of Somerset examined.—She saith she knoweth of no tarts were sent Sir T. Overbury, but either from herself or my Lord.

Sir Jervis Elwes examined.—Saith, by “ letters ” my Lady meant poison ; but the word was then used to clear his eyes.

The Lady of Somerset’s Letter to Sir Jervis Elwes.

“ I was bid to bid you say that these tarts came not from me ; and again, I was bid to tell you that you must take heed of the tarts, because there be letters in them, and therefore neither give your wife nor children of them, but of the wine you may, for there are no letters in it. Sir T. Monson will come from the Court this day, and then we shall have other news.”

Lady of Somerset examined.—Saith, that by “ letters ” she meant poison.

Serjeant Montague.—Now for my Lord’s haste to spur this on (and here I end). Read Franklin’s examination.

Franklin examined.—Saith, in a letter which my Lady told him was sent her from my Lord, there were these words : “ that he wondered things were not yet despatched ; ” and that, he thinks, was meant about Over-

bury, by reason of her then speeches to him, and present sending for Weston.

Serjeant Crew.—My part is now to discover those acts that succeeded the fact, and then my Lord begins to sew fig-leaves: 1. Practices to suppress all testimonies. 2. To surprise all letters. 3. To get a pardon, and desires a pattern of the most large pardon. Now for your practice to suppress the testimony of Franklin. You come from Court and tell my Lady that Weston was apprehended; then Mrs. Turner sends to Franklin to come to my Lady at one o'clock at night. Then my Lady tells him that Weston had confessed all, and that we shall all be hanged; and at that time did again give him another oath for secrecy. And during this dialogue she went into an inner room to speak with one, whom he took to be my Lord of Somerset: when she came out, then she instructs Franklin what to say if he were examined, but by no means to confess the knowledge of her or of Mrs. Turner: that the Lords will promise him, upon his confession, hope of a pardon, but that by no means he should believe their fair words; for if he did, then they should all be hanged. Now for the course you took in suppressing of letters. Lawrence Davis, after his master's death, made suit to serve my Lord, then his suit was rejected; but last summer, fearing this might break out, sends Rawlins to him, proffers him all courtesy, and desires that he would send to him all those letters and copies of letters which had passed between Sir T. Overbury and him. Davis did so; and upon this my Lord gave him 30*l*. After Weston and Mrs. Turner were committed there was a trunk wherein were many letters: this trunk stood at the house of Weston's son's master. For this trunk my Lord (after he was commanded to forbear the Court) makes a warrant to the constable to break it open, and to send unto him those bundles of writings that were in it; pretending they were certain bonds and writings belonging to Mrs. Hide, a sister of Mrs. Turner's. According to this direction those letters

that were in the trunk were brought unto him. Now for those letters that passed betwixt my Lord of Northampton and you : thirty of those you had sent him were delivered after his death by Sir R. Cotton ; and all these the night before your commitment to the Dean of Westminster you burnt. For those letters of Overbury's that you had, Sir R. Cotton advised you not to burn, but keep them ; and all of them being without dates, Cotton told you there might be such dates given them as would be much to your advantage ; so you gave him order for that purpose, to give dates to those letters. According to your directions he did so ; but not till after Weston's arraignment ; and then understanding at what time the poisons in the indictment were said to be delivered, he dated some of them with a purpose to cross the indictment ; and some of the letters he razes, some pastes, some pares, as they were advantageous or disadvantageous to him ; and all this to obscure the fact. My next aggravation is, that my Lord went about to get a pardon ; and that precedents should be sought of the largest that ever were granted, and they were brought him. Why should he seek this, but to be free from this murder ? And in the precedent of Henry VIII.'s pardon to Cardinal Wolsey, after many offences were forgiven, both in the beginning and ending, then in the midst come in all treasons and murders. Lastly, now I urge this declaration you sent to the King ; wherein you seem to doubt yourself, because that you endeavoured and consented to the punishment of Sir T. Overbury ; and in respect you had formerly been so much in the King's favour, thought you might expect mercy ; and seeing you had never done any offence against the King nor the State, hoped that you should never be called in question for this ; but if you should, then you implored grace for your wife ; but you never sought a pardon for her as you did for yourself. And then, lastly, you desire to have leave to dispose of your lands to your wife and child. Now, for the proof of all this that I have said. First read Franklin, for the suppression of his testimony.

Franklin's examination.—When my Lord of Somerset came to town, after Weston's apprehension, he (Franklin) was sent for to the Cockpit ; and there my Lady swore him again to secrecy, told him Weston was taken, and that it was likely he should be so shortly, and that they should all be hanged. Then retiring into an inner room, to speak with one, (whom he verily believes to be my Lord of Somerset,) she came again and told him that the Lords, if they examined him, would put him in hope of a pardon upon confession ; “but,” said she, “believe them not ; for when they have got out of you what they would, we shall all be hanged.” “Nay,” saith Mrs. Turner, “madam, I will not be hanged for you both.”

MARY ERWIN'S Examination (not upon oath), Mrs. Turner's maid.

Mrs. Turner sent her for Franklin, to bring him to the Cockpit at ten o'clock at night ; and is sure that night my Lord of Somerset came from Court, and was at the Cockpit when she came.

Lady of Somerset examined.—She confesseth all that Franklin said concerning her discourse with him ; and that my Lord was with her that night in the Cockpit.

Mr. Serjeant Crew.—Next follows the proof for surprising letters.

L. Davis examined.—Saith, that in summer last my Lord sent Rawlins to him, to desire that if he had any letters, either from my Lord to Sir Thomas, or from him to my Lord, that he would send them by him, which he did ; and for this my Lord did afterwards send him by Rawlins 30l.

GEORGE ERRAT (the Constable's) Examination.

Saith, that Poulter, a messenger, brought him a warrant from my Lord of Somerset to break open and search a house for certain writings which were pretended to be one Mrs.

Hide's, a sister of Mrs. Turner's ; and that he shewed him a part of the warrant only, but not all ; so that for that cause he would not execute it. Whereupon Poulter got smiths himself to break open the house and doors, and found in the cellar a box and bag of writings, where he saw the name of Mrs. Turner ; and those were carried to my Lord.

Lord of Somerset.—For these letters Sir R. Cotton delivered them me back after my Lord of Northampton's death ; and concerning the dates, you need not trouble yourself, for it now grows late, and I shall have very little time to answer for myself. I confess Sir R. Cotton delivered me back those letters I had sent my Lord of Northampton, and that I burnt them ; and that some parts were cut off as impertinent.

Sir R. Cotton examined.—Saith, my Lord delivered into his hands many of Sir T. Overbury's letters ; and that he cut and dated them by my Lord's direction ; and that he put in dates the next day to some of the letters after Weston's arraignment.

Mr. Serjeant Crew.—I desire my Lord will be pleased to look upon this book of Overbury's letters. And now for the copy of the largest pardon.

Sir R. Cotton.—Saith, that, at my Lord of Somerset's entreaty, a little before Michaelmas last, he got him a draught of the largest pardon, and the precedent was of one that King Henry VIII. granted to Cardinal Wolsey ; and if he desired such a one, I told him the best way was to follow precedents. The pardon was read, wherein, amongst other offences, before and after, of small account, treason and murder be foisted in.

Mr. Serjeant Crew.—And this was it that made Weston fear that the net was for the little fishes, and that the great ones could break through.

Alderman Bowles examined.—Saith, that after he had persuaded Weston from standing mute, he told him that he

feared the net was laid for the little fishes, and that the great ones would break through.

Mr. Serjeant Crew.—The last thing I urge is my Lord's declaration to the King, which I desire should be read.—The same that were noted before, after he understood by my Lord Coke that he was to be arraigned, &c.

Mr. Attorney.—You see, my Lords, in this declaration of my Lord Somerset there is a brink of confession; I would to God it had a bottom! He urges that in respect he hath formerly been so great in the King's favour, and had never committed any treason, neither against his person nor state, that he should never have been called to an account for this fault, though he had been guilty. That grace timely given is a benefit; and that it is not only enough to give life, but to save reputation. But if he must be urged, then he desires his wife might be pardoned, having confessed the fact. And that if he must be put upon the hazard of a trial, the King will before give him leave to dispose of his lands and goods to the use of his wife and child; and that in the meantime he will give my Lord Hay and Sir R. Carr leave to come to him.

Mr. Serjeant Crew.—This declaration is an implicative confession.

Mr. Attorney.—I think there is none here but wonders, seeing that all poisons be works of darkness, how this should so clearly appear. But it seems, his greatness in fortune caused this grossness in offending.

Lord High Steward.—My Lord of Somerset hath behaved himself modestly in the hearing; and only this, (before you speak for yourself,) by way of advice, I will say unto you, in giving you two examples: your wife, that yesterday confessed the fact, and there is great hope of the King's mercy, if you now mar not that which she made. On the contrary, Byron, who, when the King of France used all the means he possibly could to bring him to the acknowledgment of his offence, which if he had done, there

was no question to be made of the King's grace. And I think there never was, nor is, a more gracious and merciful King than our master. But Byron still persisting in the denial of his fact, you know his end.

Lord of Somerset.—I am confident in mine own cause, and am come hither to defend it. And in respect the King's counsel have been so long in speaking against me, that neither my memory nor notes will give me leave to answer every particular in order, I will begin with some of the last things that they seemed most to urge against me, and so answer the rest that I think do anything at all touch me. For the powder that was sent Overbury to make him sick, that so I might have the better occasion to speak for him to the King for that purpose, he himself desired it, and upon his letter I sent it. And though it be true that I consented to his imprisonment, to the end he should make no impediment in my marriage; yet I had a care of his lodgings, that they should be where he might have the best air, and windows both to the water and within the Tower, so that he might have liberty to speak with whom he would. So you see it was against my intention to have him close prisoner. Whereas the breach of friendship between Overbury and me is used for an aggravation against me, it is no great wonder for friends sometimes to fall out, and least of all with him; for I think he had never a friend in his life that he would not sometimes fall out with, and give offence unto. And this they termed insolence in him, but I give it a better name. For the great trust and communication of secrets between Overbury and me, and for the extracts that he took of ambassadors' letters, I confess this; I knew his ability, and what I did was by the King's commission. For other secrets, there were never any betwixt us. And for his fashion of braving both in words and writing, there was none that knew it better, nor feared it less than myself. At that time he was in disgrace with the Queen, and for that cause was enforced

for a time to absent himself from court, and this was for some particular miscarriage of his towards her Majesty; and though I laboured his reconciliation and return, yet he with main violent terms laid the cause of his disgrace upon me. And another time my Lord of Salisbury sent for him, and told him, that, if he would depend upon his favour, he would presently help him with a suit that should benefit him 2000*l.*, which presently Overbury, coming to me, told me of: to which I answered, he did not need to rely upon anybody but me; and that, if he would, he might command my purse, and presently have more than that; and so he had. And yet afterwards, upon some causeless discontent, in a great passion, he said, that his love to me had put him out of my Lord of Salisbury's favour, and made him lose 2000*l.* Whereas it was urged that I caused him to refuse the employment that was imposed upon him; it is not so, for I was very willing he should have undertaken it, but he not. My Lord of Canterbury moved him to it, but not without my privity; for I should have been glad to have removed him, both in respect of my marriage and his insolence. But Overbury came to me, and said, "I will tell Sir Dudley Diggs I will undertake this embassy, that he may so return answer to my Lord of Canterbury; but then you must write to me not to do so, and so take it upon you." Whereas it is pretended that I should cause poisoned tarts to be sent him to the Tower; my wife in her confession saith, that there were none sent but either by me or her; and some were wholesome, and some not: then it must needs follow, that the good ones were those which I sent, and the bad hers.

Lord Lisle.—If you had sent him good tarts, you should have seen them conveyed by a trusty messenger.

Lord Compton.—My Lady, in her letter to the Lieutenant, writes, "I was bid to bid you do this." Who should bid her?

Mr. Serjeant Montague.—The continual letters between my Lord and her argues that.

Lord of Somerset.—If Franklin knew me so well, and that I was privy to the plot, why should then my wife and I, (as he pretends,) when he was there, speak so closely, and always out of his hearing and sight? But for Overbury, my furthest intent in his imprisonment was, that he should be no impediment to my marriage; and this I communicated to my Lord of Northampton and Elwes.

Serjeant Montague.—You could not couple yourself worse than with them two.

Lord of Somerset.—Whereas Simcocks says, from the relation of Weston, that he so often came to me; I protest I never saw him till after Overbury's death, and then Rawlins brought him to me.

Serjeant Crew.—Sir Jervis Elwes in his examination saith, that Weston many times told him, that my Lord of Somerset many times sent for him. And for this purpose you shall have Weston's examination.

Weston's examination.—Saith, that my Lord of Somerset many times sent him directions, before Overbury's going to the Tower, to appoint meetings betwixt him and my Lady.

Lord of Somerset.—This may hold, and yet that I never spake to him; so for those messages he spoke of, he might receive directions from me by a third person. And for that which Payton alleges about the powder which I sent, and made Sir T. Overbury so sick, that powder I sent was one of them which I received from Sir R. Killegrew.

Serjeant Crew.—But this, my Lord, was none of the powders you received from Sir R. Killegrew, for you had three from him. The first was lost; the second you sent him by Rawlins; and the third yourself took at Buly. Now a fourth, which was sent by Davis, was that that made him so sick and gave him so many stools; and that was poison, and sent three weeks after that that Rawlins carried.

Sir R. Killegrew.—Saith, that my Lord desired him to give him powders, which he himself sometimes used to take for a vomit; but he thought it had been only for himself,

not that he had had a purpose to send it to Sir T. Overbury ; and that my Lord never had of this powder of him but thrice.

Mr. Rawlins examined.—Saith, that the first vomit Sir R. Killegrew gave my Lord was laid upon a tester of a bed, and lost ; and that then upon that he got another, which my Lord sent to Sir T. Overbury by him ; and afterwards a third, which my Lord took at Buly ; but he never heard that Sir T. Overbury desired my Lord to send him any.

Franklin examined.—Saith, that he provided a white powder, which was poison, for my Lady called it arsenic ; which, as my Lady did afterwards tell him, was sent to Sir T. Overbury in a letter.

Lord of Somerset.—I do not think you can take Franklin for a good witness. Now for the antedates, which are used as a circumstance against me : Sir R. Cotton moved me to it, saying, that the dates might prove useful to me at this time. Whereas my Lord of Northampton writes in one of his letters, that he had prompted the Lieutenant ; I conceive his meaning to be, that he should endeavour to make Overbury be a good instrument betwixt my Lord of Suffolk and me ; and to that end, those whom he thought to be his principal enemies should be the only causers of his freedom. And what I understand by Elwes's conclusion, which my Lord of Northampton relates in the end of one of his letters to me, that death is the best way ; I wish that my answers to those letters were now to be seen ; and if I had ever thought that those letters of my Lord of Northampton's would be dangerous to me, it is likely I would never have kept them. For the warrant I made, my wife desired me to do it for Mrs. Turner's sake ; Packer formed it, and told me I might do it as a Councillor alone, without other hands ; for I would have had at that time my Lord Knowles to have joined with me, but that he was at Council. And when this warrant was sent, I was not commanded from Court as is pretended.

Lord High Steward.—All the Council together could not justify the making of such a warrant.

Lord of Somerset.—For my endeavouring to get a pardon; having had many things of trust under the King, and the custody of both the seals, without particular warrant, I desired by this means to be exonerated. And for all general words, the lawyers put them in without my privy. And for the precedent of the largest pardon, which I had from Sir R. Cotton, it was upon this occasion Sir R. Cotton said, “In respect you have received some disgrace in the opinion of the world, in having past that pardon which the last summer you desired, especially seeing there be many precedents of larger, I would have you now get one after the largest precedent, that so by that addition you might recover your honour.” And upon this I bad him search for the largest.

Serjeant Montague.—Sir R. Cotton says otherwise.

Sir R. Cotton’s examination.—Saith, my Lord desired to seek precedents of the largest pardons.

Lord of Somerset.—For the declaration which I lately sent to the King, and particularly the word [mercy] which is now so much urged against me, it was the Lieutenant’s; for I would have used another, but he said it could be nothing prejudicial unto me; but when I writ it, I did not think thus to be sifted in this declaration; for I in that, in all humility, did so far endeavour to humble and yield myself, that the King might the better express his grace. And for the words, [that I did consent to and endeavour the imprisonment of Sir T. Overbury,] it is true, for the reason there alleged.

Mr. Attorney.—May it please your Grace, my Lord here hath had a most gracious hearing, and hath behaved himself modestly and wittily.

Lord High Steward.—If you have any more to say, my Lord, you shall be heard at length; we will not straiten you in time.

Lord of Somerset.—For Loubel, I never saw him but twice. He affirms the contrary: I deny it; and there is none else that proves it but himself. For Sir R. Cotton, I could wish that he were here to clear many things that now be obscure.

Mr. Attorney.—If he were here he could not be sworn for reason of state, being held for a delinquent.

Lord of Somerset.—For Sir D. Wood, there was a suit wherein he might have benefitted himself 1200*l.*, which I was willing to further him in, conditionally that Overbury should have been a sharer. But for the not effecting of it, it seems he took some dislike to Sir T. Overbury. The money that is said Sir J. Elwes gave for his place, I had no part of it. Whereas the shifting of offices is urged against me, to make the more easy way for Elwes's entrance, it is well known the reason of Wade's displacing was in respect of his carelessness, in suffering the Lady Arabella to have a key, by which she might have conveyed herself out of prison. More I cannot call to mind, but desire favour.

Mr. Attorney.—It hath, my Lord, formerly at arraignments been a custom, after the King's counsel and the prisoner's defence hath been heard, briefly to sum up what hath been said; but in this we have been so formal in the distribution, that I do not think it necessary. And therefore now there is no more to be done, but that the Peers will be pleased to confer, and the prisoner to withdraw until the censures be past.

Earl of Somerset.—My Lords, before you go together, I beseech you give me leave to recommend myself and cause unto you. As the King hath raised me to your degree, so he hath now disposed me to your censures. This may be any of your own cases; and therefore I assure myself you will not take circumstances for evidence, for if you should, the condition of a man's life were nothing. In the meantime, you may see the excellence of the King's justice, which makes no distinction, putting me into your hands for a just and equal

censure. For my part, I protest before God I was neither guilty of, nor privy to, any wrong that Overbury suffered in this kind. A man sensible of his own preservation had need to express himself.

So he being withdrawn from the bar, my Lord High Steward briefly reported to the Lords the proofs against my Lord of Somerset. Then the Lords by themselves (and my Lord Steward for his case, but returning before the rest) staid some time together, in which interim they sent for the two Chief Justices. Being returned, the Serjeant Cryer, Mr. Fenshaw, called every Lord by his name, Robert Lord Dormer, and so to the rest, before my Lord High Steward spake.

Lord High Steward.—Robert Lord Dormer, how say you, whether is Robert Earl of Somerset guilty of the felony, as accessory before the fact, of the wilful poisoning and murder of Sir T. Overbury, whereof he hath been indicted and arraigned, or not guilty? And so particularly to every Lord, one by one.

Lord Dormer.—Guilty, my Lord. (Standing up, and bare-headed, then sitting again.)

My Lord Norris, when it came to him, said, “Guilty of murder;” but, being told by my Lord High Steward that he must say either guilty or not guilty to the indictment, he said “Guilty.” Then Mr. Lieutenant brought the prisoner again to the bar: but he had before taken off his George himself.

Mr. Attorney.—My Lord High Steward, Robert Earl of Somerset hath been indicted and arraigned, and put himself upon his Peers, who all, without the difference of one voice, have found him Guilty. I pray judgment.

Mr. Fenshaw.—Robert Earl of Somerset hold up thy hand. Whereas thou hast been indicted, arraigned, and pleaded Not Guilty, as accessory before the fact, to the wilful poisoning and murder of Sir T. Overbury, and hast put thyself upon thy Peers, who have found thee guilty, what

hast thou to say for thyself, why sentence of death should not be pronounced against thee?

Lord of Somerset.—The sentence that is passed upon me must be just; I only desire a death according to my degree. For that Simcocks said—

Lord High Steward.—My Lord, you are not now to speak any more in your defence, but why judgment of death should not be pronounced.

Lord of Somerset.—Then I have no more to say, but humbly beseech you my Lord High Steward and the rest of the Lords to be intercessors to the King for his mercy towards me, if it be necessary.

My Lord High Steward, taking the white staff from Sir R. Coningsby, pronounced sentence.

Lord High Steward.—Robert Earl of Somerset, whereas thou hast been indicted, arraigned, and found guilty, as accessory before the fact, of the wilful poisoning and murder of Sir T. Overbury, you are therefore to be carried from hence to the Tower, and from thence to the place of execution, where you are to be hanged till you be dead. And the Lord have mercy upon you!

Lord of Somerset.—My Lords the Peers, I beseech you, as you have been the Judges of this day, so you will be my intercessors.

Then my Lord Steward broke his staff, the Court dissolved, and the prisoner was carried away.

SECTION II.

MANUSCRIPT REPORT OF THE TRIAL OF THE EARL OF
SOMERSET.

THE original manuscript of the following report of the trial of the Earl of Somerset is among the archives of the State Paper Office. It is indorsed, "The Arraignment of the Earl of Somerset." The indorsement is apparently in the hand-writing of Sir R. Winwood.

The discrepancies between the printed report and the manuscript afford matter for some reflection and conjecture. Are they the result of the different manner in which oral matters will be repeated by individuals probably almost equally competent to understand the proceedings, and equally attentive to them? It is notorious that great dissimilitude is to be expected in the accounts of any transaction, especially if it consist of oral statements, when it is related again by persons of greater or less capacity, or feeling a greater or less interest in what they have heard; but, in the present case, the reporters, if they were in fact different persons, were probably selected by the Government for ability in

their vocation, and were under an obligation of duty to report all that passed. Or is the printed report to be regarded as exhibiting the emendations which the King, or his ministers or law officers, thought it politic that the original notes of the trial constituting the present manuscript should receive, before it was deemed prudent to subject it to the public eye in print? Whether the printed report was taken from the manuscript now in the State Paper Office, or from a manuscript prepared by a different reporter present at the trial, the sagacious reader will probably be of opinion, that it has appearances on the face of it of having, like the accounts of the trials for the Gunpowder Plot, for the Essex conspiracy, and other matters published by authority, undergone the process of curtailing, expanding, and correcting to such an extent as was deemed expedient for the vindication of the Government.

Although the order of the witnesses is precisely the same in the two reports, and Payton is the first witness mentioned in each, the printed report makes Payton relate a very remarkable altercation between Somerset and Overbury, about the Countess, which he overheard, and which he represented to have taken place at midnight in a gallery at Whitehall: It is singular that there is nothing of this kind in the MS. If such a statement was made by Payton, it is too striking not to have been remembered by any person present at the trial, still

less by a reporter ; nor could it be deemed otherwise than very important for giving a clue through the labyrinth of this mysterious history.

It appears from the MS. that the Earl of Somerset relied greatly in his defence upon a letter written to him by Overbury, to the effect, that *a powder which he had received from the Earl had agreed with him, but that, nevertheless, he did not intend to take any more powders of the same kind.* It is shewn, further, by the MS., that letter was proved by Sir R. Cotton ; and the reporter exerts himself to take off the force of this piece of evidence by observations which will be considered in a subsequent chapter. But it is remarkable, that, in the printed report, no mention whatever is made of this letter of Sir T. Overbury, either in the Earl's defence or Sir R. Cotton's examination.

In the printed report the Earl of Somerset is represented to have written to Mrs. Overbury in these terms : " Your stay here in town can nothing avail your son's delivery ; therefore *I would advise you to retire into the country.*" The Earl's letter to Mrs. Overbury is set forth in the manuscript. One and the same letter is evidently intended to be exhibited in both reports ; but the manuscript statement of the letter contains no such passage as that above mentioned. Again, both reports contain a second letter written after Overbury's death ; one report represents it to have been written to Mr., the other to Mrs. Overbury. The language of the letter in

the two reports differs; and the printed report omits a promise on the part of the Earl to *defray the expenses of Mrs. Overbury's second son, then in France; and also an obscure allusion to obtaining the pardon of some gentlewoman.*

The two letters written by Overbury whilst in the Tower to Somerset correspond closely in substance, but differ throughout in expressions. The reports might not improbably seem to be those of two different persons hearing letters read, and not being very expert in short-hand writing. Nevertheless, the printed report presents some appearances of exhibiting the MS. in a more pointed and polished form. Thus, in the MS., Overbury's second letter concludes thus: "This I have sealed under *seven* seals, whereof my friends shall know; and if you persist to deal thus inhumanly with me, I will leave you to die with shame." The printed report has it: "On Tuesday I made an end of this, and on Friday sent it to a friend of mine under *eight* seals; and, if you persist still to use me thus, assure yourself it shall be published. *Whether I live or die, your shame shall never die, but ever remain to the world, to make you the most odious man living.*"

The letter of the Countess of Somerset, sent to the Lieutenant of the Tower, is different in point of expression in the two reports. The printed report omits a pronoun, "*he*," contained in the MS.: "*If he did send you any wine.*" The omission is so far remarkable, that this pronoun is mentioned in Lord

Bacon's letters, where he compliments the King on his sagacity in doubting whether the Countess meant the pronoun "he" to relate to Somerset. And Bacon promises to give order to Serj. Montague to leave out of the evidence what the Countess had said regarding this pronoun. It further appears that the printed report omits a "*perhaps*" in the Countess's confession relative to the word "letters" being intended to signify poison.

In the manuscript it is mentioned that Sir Davie Wood desired to have an assurance of pardon for assassinating Overbury under the Earl of Somerset's hand, "which being denied him," the MS. concludes, "*he refused to undertake it, and so the enterprise was quashed.*" But the printed report states that when the Countess told Sir Davie that the Earl's assurance of pardon could not be got, she further "*promised all favour possible to him, and warranted him to go on upon her life.*"

It appears from the manuscript, that Lobell, the apothecary, in his examination, stated that the Earl of Somerset "*willed him to write to Doctor Maiot*" (probably Mayerne, the King's physician) "*concerning physic to be given to Overbury.*" This is a circumstance very favourable to Somerset, and it is omitted in the printed report. The printed report also omits another circumstance contained in the MS., viz., that the letters of Somerset which were found by Sir R. Cotton among the Earl of Northampton's papers after his death, were delivered by him to the

Lord Treasurer. This of itself would have been important, for then the Lord Treasurer might have been examined as to their contents: but, further, it is left in doubt, by the manuscript, whether the fact that the papers ever reached Somerset, or that he burnt them, did not depend solely on the hearsay of Sir R. Cotton. The printed report makes the Earl of Somerset acknowledge that he burnt them: there is no such acknowledgment in the MS.

The MS. mentions a confession of Franklin taken on the 12th of November; this is not noticed in the printed report. A confession of Franklin bearing that date would have destroyed the credit which Sir E. Coke had on several occasions endeavoured to attach to Weston's examination of the 16th of November, that it was voluntary.

In the manuscript report a date is given for the conversation in which Franklin represents that the Countess told him that she had received a letter from the Earl, in which were these words: "that he wondered things were not yet dispatched." The date is omitted in the printed report. It was, according to the MS., "about a month after Whitsuntide." Easter Day in the year 1613 fell on the 4th of April, and Overbury died on the 14th of September, about three months after Whitsuntide. And it might have been thought improbable that the Earl should have remained so long in a state of wonder, without taking any step for expediting the business, or making further inquiry about it.

The printed report contains a statement in the confession of Helwysse which is not to be found in the MS., viz. that "*Weston never received any wages from him.*"

There is much difference in the two reports with regard to all the speeches. A remarkable passage in the MS. is omitted in the printed report of Sir F. Bacon's speech; viz. that Overbury, "*in his writings, had dared to promise this Lord the unlawful love of the greatest woman in this kingdom.*" Bacon's speech in the printed report appears a more finished production than that given in the MS. In the MS. Bacon obliquely compliments the Lord High Steward, by quoting one of his sayings in the Court of Chancery; thus: "I have often heard your Grace in the Chancery to say that 'fraud and frost always end foul,' and so it hath justly happened in the friendship of Overbury." This conceit is more elaborated in the printed report; thus: "I have heard my Lord Steward say sometimes in the Chancery, that *frost and fraud end foul; and I may add a third, and that is, the friendship of ill men.*" Some rhetorical flourishes contained in the MS. are omitted; as the comparison between Sir T. Overbury and St. Lawrence on the gridiron; and the oratorical flight, that Somerset did keep his honour in delivering Overbury, but that "*his bail was death.*" And Sir F. Bacon's eulogy on his own methodical arrangement: "My Lord, if you omit to answer anything objected against you, I shall rather *count it*

your guiltiness that shall make you unable, than any want of memory, when there is so plain a method as I shall use." Perhaps, on reflection, Sir F. Bacon may have deemed it more consonant to good taste to omit these passages.

Sir R. Crew's speech in the printed report and in the MS. are quite different compositions. The passage as to Somerset, respecting his following Adam in his fig-leaves "*one step further into the thicket;*" the comparison of King James to an eagle, and the introduction of the ghost of Overbury crying to Somerset "*Et tu Brute!*" are flights of rhetoric which can scarcely be supposed to have escaped any reporter. But it is easy to suppose that a severe critic or a rival orator, in preparing a manuscript report for publication, may have judged it advisable to prune these luxuriances.

The reports of the Earl of Somerset's speech in the MS. and in the printed trial are strikingly different. The MS. report of the speech is the more life-like. Besides containing some arguments not noticed in the printed report, it represents the Earl to have made forcible appeals concerning the credit of the witnesses; as where the Earl exclaims against the "*memorative relation of such a villain as Franklin;*" and desires that "*his own protestations, on his oath, his honour, and his conscience, should be weighed against the lewd information of so bad a miscreant.*" The printed report contains no trace of these remarks; and it is obvious that such passages

would be the most likely to be struck out by persons desirous of publishing a version of the proceedings which might diffuse an opinion among the public, that one of the wickedest of men had been condemned after one of the fairest of trials, and by one of the justest of prosecutions.

It will be apparent from the remarks which in the manuscript accompany the report, that the writer was actuated by an adverse feeling towards the Earl of Somerset. Even, therefore, if we suppose that the manuscript contains a more faithful report of the trial than what was published by Government, there may be ground to suspect that an impartial reporter might have given a version of the proceedings different from any that has transpired. As to which it is remarkable, that we learn from the letter of an eye-witness to the Earl of Somerset's trial, that the Earl was desired to write his name, in order that his handwriting might be compared with that of certain letters; but that the Earl contended it was contrary to law to require him to furnish proof by comparison of handwriting for his own condemnation; neither the manuscript nor the printed report of the trial contains the slightest allusion to this circumstance. It was probably omitted, as indicating an endeavour, by the law officers, to implicate the Earl by illegal and oppressive means, which had been unsuccessful.

There is in the British Museum a manuscript entitled "A Booke touching Sir Thomas Overbury,

who was murdered by Poison in the Tower of London, the 15th day of September, 1613, being the 32nd year of his age." It contains the proceedings of the divorce, the trials of Weston, Turner, Franklin, and Helwysse, the Earl and Countess of Somerset's arraignments, a ballad on the Earl and Countess of Somerset not fit for publication, and "Notes taken A. D. 1637, from the mouth of Sir Nicholas Overbury, the father of Sir Thomas."

The notes are as follows:—"Memorandum, that I Nickolas Oldisworth, who wrote an extract out of divers books, letters, &c., did deliberately read it over on Thursday, the 9th of October, 1637, in the hearing of my old grandfather, Sir Nicholas Overbury; and he affirmed, that himself indeed was examined twice, as it is set down in this book; and that his answers are here written rightly, *but not fully, for he spake much more than is here expressed.* Also he affirmed that all things in the arraignments of Weston, Turner, Helwish, Franklyn, &c., are rightly written for the substance, *though many circumstances are omitted*, here being nothing untrue, yet *not the whole truth.* Only in the trial of Mrs. Turner, where the Lord Chief Justice told the jury that Weston, at his examination, confessed the truth of all these crimes, Sir Nicholas said, it should be rightly written, Weston at his *execution* confessed, &c.; for Weston was stubborn and shuffled much when he was examined, but when he was hanged, he acknowledged all the crimes which were laid

against him.—*Nic. Oldisworth.*” It may be observed of these remarks by Overbury’s father, that any reporter, anxious only to satisfy public curiosity, would, most probably, not have *omitted many circumstances*, and would have related the *whole truth*; but that there should have been omissions and suppressions in the official reports of the trials was quite in consonance with the practices of State in ancient times.

The British Museum manuscript corresponds, in substance, with the printed report in the State Trials, and is evidently taken from the same originals, most probably the official report of the King’s printer. As this manuscript, however, differs in a few slight respects from the printed report, a copy of the Earl of Somerset’s speech contained in it is here subjoined to the manuscript procured from the State Paper Office.

The Arraignment of the Earl of Somerset.

The prisoner standing at the bar, before the indictment was read, Sir Henry Montague, the King’s Serjeant, spoke briefly to this effect:—

My Lord High Steward, your Grace, and you the rest of the Peers my noble Lords, are this hour presented with a heavy spectacle. Behold here a Peer of the realm, instead of his staff of state in his hand, holding up his hand at the bar for foul felony and cruel murder. And in this observe the justice of our Sovereign, the equity and sanctity of our laws of England, whereby the life, as well as the estate of every subject, is either preserved or

revenged. He is (my Lord, so please your Grace) to be indicted as accessory before the fact to the felonious murdering and poisoning of Sir Thomas Overbury in the Tower. The inquisition, whereby was found *billa vera*, hath been presented by seventeen Knights and Esq^{rs} of Middlesex, whom for their great worth I cannot chuse but name unto you. Sir Thomas Fowler, &c. And you my Lord of Somerset think it neither hard nor strange, if I shall say unto you in this foul felony and murder you especially deserve both shame and punishment, since in all actions of guilt and evil *plus peccat auctor quam actor*; and what I now pronounce against you for the King in affirming you killed Overbury, hath heretofore been pronounced to a King in the like case, even King David; for so the prophet rebuked him, "Thou hast killed Uriah the Hittite with the sword, and hast taken his wife to be thy wife, and hast slain him with the sword of the children of Ammon." My Lord, I affirm boldly it was Weston poisoned, but you than persuaded; it was his hand, but your sword. By your counsel and power he was murdered. It was a stronger hand than Weston's whereby Overbury died. And now, my Lords, in consideration of this case, I will be bold to put you in mind of two things.

First, I do desire your Lordships that in this case you do not expect eye proofs, as in usual murders, this being by poison, which of all manner of murdering is the most secret, and will not afford such plain evidence: but as much light as can be found in a work of such secrecy and darkness we will present unto your Lordships, whereby it shall no less truly and undoubtedly appear unto your Lordships that the prisoner at the bar is guilty of murder, than if any eye-witness should affirm it.

Secondly, I desire your Lordships to ground your judgment upon the form of the indictment, wherein four several poisons are affirmed to have been procured by this Earl; since that wh^{ch} your Lordships are to inquire is not, whe-

ther Sir Thomas was poisoned by all the four said persons in manner as in the indictment is laid down, but your issue is, whether he was poisoned by the procurement of this Lord, or no. This is the law, and this was agreed by all the Judges.

When Sir Henry Montague had ended, the indictment was read by the Clerk of the Crown. That done, my Lord High Steward spoke some few words to the Earl of Somerset, urging him to confess his fault, as the surest way to open the gates to the King's mercy; and for this purpose instanced upon the example of Biron, who, if he had submitted himself to his Sovereign in time, his pardon would easily have been granted, and he perchance restored to his former favour; but after he was condemned he sued for mercy, but then in vain, for the door was shut against him. The Earl of Somerset still justifying of himself, Sir Francis Bacon, the King's Attorney-General, spoke to this effect:—

May it please your Grace, my Lord High Steward of England, and you the nobles of the realm, I know you cannot without noble consternation behold this prisoner at the bar, as yet a fellow Peer of this realm, nor without much grief to the whole body cut him off from you, as yet a member of nobility. You shall have evidence sufficient and apparent. I will tell you, my Lords, my fellows, &c., I have received orders and directions from his Maj^{ty} to pursue our accusation against this gent at the bar with direct and real evidence, without expatiating or aggravating his offence upon circumstances and inferences. My Lords, had not we been thus commanded, our own conscience and charity would have led us to this course in our proceedings; for God forbid that any of us should seek, by the colors of wit or force of rhetoric, to make the fact seem more heinous, or the prisoner more foul, especially, my Lords, this being such a cause as shall not need any aggravation, for it will bear itself; yet we are glad of so good a warrant,

and joy in the just and equal directions of our master the King. My Lords, the deed is a work of darkness ; poisoning is the most secret manner of murdering ; yet, so far hath the finger of God shewed itself in the discovery of this close and obscure complot, that I shall without any great difficulty direct your Lord^{pp}s with the lantern of truth, and carry it before you upright and safe from the blasting winds of any frivolous evasions or weak pretences of the prisoner. I love order, and will use it the rather, my Lord, for your benefit, whereby you may easily and readily, having the pen and ink allowed you, observe how you are accused, and without disturbance or interruption apply your answer to that which I intend to say, which I will divide into four parts.

*The Effect of Sir Francis Bacon's Speech, the King's
Att. Gen.*

First, I will consider the greatness of the crime for which you stand indicted ; so great, that the King, by his oath, honor, regard of justice, and Royal care of preserving goodness, hath been induced, yea almost enforced, to command this gent to a public trial, herein plucking the very signet from his right hand.

Secondly, I will present unto you the nature of the proofs to be required.

Thirdly, I will state the fact and proof itself.

Fourthly, I will either produce oaths of men, examinations, letters or other pregnant matters in writing, to justify this accusation.

First, it is murder whereof you are accused, the greatest crime next unto treason.

Secondly, it is poisoning, the most dangerous of all murders.

Thirdly, of the King's prisoner in the Tower. I will not add the.

Fourth, under color of friendship, which is an evil in morality.

Murder, which, as it is the greatest against man, so it is the first that ever man was punished for, not at the first by death in respect of propagation of mankind, but by such a curse as well demonstrated God's wrath, hatred unto this sin, and Cain's heinous transgression. Sometimes the punishment is deferred, but it is always crying for revenge; so Abner's death, though it was respited, yet was it not forgotten.

Secondly, it is poisoning—a foreign manslayer fetched from Rome, who, in spiritual matters reaches her cup of poison for the nations of the earth to drink of,—an Italian revenger, a stranger to the records of England, the cruelty and danger whereof is known by three attributes:—

First, it takes a man in God and the King's peace. Nature in the act of refreshing is oppressed, and in the necessary use of sustenance is decayed and perished; that of a poisoned man as of this prisoner I may truly say, his table is made even a snare unto him.

Secondly, it is an evil easily offered, uneasily prevented; soon acted, but hard to be discovered; carrying with it the greatest promise to perform, the safest to conceal.

Thirdly, my Lords, it is yet become more dangerous, in often mistaking the man it aims at; it is like an arrow flying in the dark, that is shot at one and hits another; and in this consideration, I may say, *Qui potest esse tutus?* and of him that shall thus die, speak with the poet, *Concidit infelix alieno vulnere*. From this attribute, my Lords, the Statute of 22 H. VIII. was begotten, which followed upon the poisoning of the Bishop of Rochester's meat (at a solemn feast), where the malice was but to one, the harm to many. In the third place he was a King's prisoner in the Tower, for whose death you stand now indicted. What presumption, what height of evil did your breast nurse, my Lord, to plot his ruin and destruction, whom the King and the State had

taken into their protection? Every prisoner is in the King's tuition, and is said to be there in a sanctuary. Nay, my Lord of Somerset, you are the first that above a hundred years since have attempted and acted a murder in the Tower, for since Richard the Third murdered his nephew Edward the 5th and his brother, until Overbury, no prisoner in the Tower hath perished by treachery or private revenge. But I will but touch this and pass unto the proof, and that briefly; and in the proof I desire your Lordships to inquire according to the nature of it, which is treacherous, secret, and close, wherein it is impossible to have any directer evidence than we shall offer unto your Lord^{pp}s, for who could impeach Livia for poisoning of her husband Drusus? or who demonstrate the guiltiness of Pansarca, who, with a knife poisoned on one side, envenomed her husband's meat, and none could ever mistrust it, since that she gave to him she herself did eat, only the difference of the knife's breadth? You now, my Lords, are only to inquire upon the procuring and giving of poison; and if you find enough to prove him an abettor to the poisoning, it is sufficient, since not he alone that lets the dog slip, but he that rouseth, stoppeth, and ensnareth the silly buck, is his enemy to the death. But I have promised not to dilate, and therefore I come to the third, w^{ch} is the staking of the truth, wherein first I will give you a narration of the fact, then distribute and apply, and in the last place produce testimony. In good faith I would have this gent have a fair and easy trial in all things. And, my Lord, if you omit to answer anything that shall be objected against you, I shall rather count it your guiltiness that shall make you unable, than any want of memory where there is so plain a method as I shall use. And for the narration of the truth, you shall know, my Lords, that this Overbury was unto this prisoner a long respected friend, indeed his oracle, from whom he received advice and counsel. Yet was Overbury, for so it will appear, a most thrasonical and insolent fellow,

that, as shall be shown unto your Lord^{ships}, did not stick to upbraid this gent to his face, assuring himself that he had neither wit nor discretion but what he put into him, receiving it from him as from a fountain; and indeed, my Lords, it is most evident, no matter of secret in the state was concealed from Overbury, which this Lord of Somerset, being then Secretary during his Majesty's pleasure, did not acquaint Overbury with, which, my Lord, how weakly, yea presumptuously it was done by you to commit the King's secrets to another, and he not interested in the state, be yourself your own Judge. Neither was this practised by you, my Lord, once or seldom, but often, yea continually; sometimes sending the packets from Court broken up to Overbury; sometimes sending them to Overbury, to be broken up by him, and according to his directions to acquaint the King and State, he sending unto you an abstract of them. Nay, my Lords, yet further in these unfitly concealed passages, this gent and Overbury had strange names and characters for princes and noblemen in this realm, familiar to themselves, a thing only used by princes or against princes. My Lord, I have often heard your Grace in the Chancery to say, that fraud and frost always end foul; and so my Lord, it hath justly happened in the friendship of Overbury and this gent the prisoner, which, within some twelve months before Overbury's death, on my Lord's part, was changed into a mortal hatred, which fire kindled within this Lord with the fuel of unchaste love unto the unfortunate lady yesterday condemned, to which pursuit of affection Overbury did always oppose himself, growing jealous of my Lord of Northampton, with whom Somerset so effectually comploted; indeed this Overbury was known a professed opposite to the house of the Howards, an and unbounded fellow in plain truth. My Lords, he was nought, for so well shall be manifest, that in his writings he dared to promise this Lord the unlawful love of the

greatest woman in this kingdom; this gent and Northampton being resolved to go through with the nullity. At first Overbury gently and friendly dissuaded this gent; but that not being of force to expel the resolution of marriage, he from friendly admonition fell to threatening of this prisoner, which he neither would nor could but through the notice of such secrets as passed between them, whereby he grew bold to use this rough manner of withstanding. Upon this his opposition, my Lords, there sprung up two fountains of malice, which in two streams ran violently agst Overbury.

The first from the lady, whom fury moved to revenge her disgraceful imputation.

The other from my Lord of Somerset, who thought his prying head would undo his fortunes, having now as he thought lost his heart.

I might add a third from Northampton, as bitter as the former. This I dare boldly affirm, from these three there was a resolution given that Overb^{ry} must die, which first they attempted by the sword, knowing Overbury to be a hot and violent spirit; and their instrument in this kind was Davie Wood, but he denying, they gave the best to be by poisoning, w^{ch} to effect they thought the first step to be imprisonment; and therein they did well, for Overbury had such a working wild head, that abroad he would hardly have been foiled. My Lords, no man is imprisoned without a cause; the law of England would have all men free; some ground therefore must be raised to abridge Overbury of his liberty, w^{ch} was thus comploted: the King should be moved to send Overbury upon employment beyond the seas, from which Somerset should privately and under the pretext of friendship dissuade him even to a denial; for now, my Lords, you must understand, Somerset had raked up his fire in the ashes, and not long before protested a reconciliation. Upon this denial to serve his Maj^{ty}, they knew the consequence for contempt would be Overbury's imprisonment, from which Somerset, through his greatness,

assured him a quick and speedy release, and indeed he did deliver him, but his bail was death. It is strange to others by what winding and turning they wrought this mischief, and how quickly they changed the course of this place, in placing and displacing at their pleasures. In 15 days was Overbury committed, Sir William Wade, the honest Lieut^{nt}, displaced, Sir Jarvis Hellwish made Lieutenant in his place, his old keeper rejected, and Weston commended and accepted in his stead; the 21 of April 1613 was Overbury committed; the 6 or 7 of May, being the next month after Sir Jarvis came unto the Tower, Weston was received and administered the first poison; indeed upon a matter in 5 days were all these alterations plotted and acted. And note the last cruel means unto their tragedy: he was by this lady and the Earl of Northampton's appointment kept close from all access of friends, from the comfort of acquaintance, speaking with no tongue but theirs, feeding with no hands but with the hands of secret enemies, so that of necessity he must refuse to eat and drink, or he must be content to eat and drink his poison; yea, so cruel were they in ministering their lingering poison, that, like Mithridates, his body was habited agst the violence of it, as poison seemed not deadly administered unto him, for so Weston confessed unto the Countess, he had given him more poison than would have killed 20 men. Now to keep this more secret, all close means were used, access of friends denied by the power and working of this gent, who yet further in his delays and pretences so coloured his malice to Overb^{ry}, that he used him much like fortune-tellers, that tell a tale in a man's face whilst another cuts his purse. My Lords, Overbury in prison lay like St. Lawrence upon the gridiron, open to his enemies, close to his friends; and all this by your means, my Lord of Somerset, as I will evidently prove by matter precedent, concomitant, and subsequent. I will still keep a method, and will prove, first, your hatred and jealous fear of him; secondly, how you

were principal in all means, keeping him close prisoner, denying him access of friends; thirdly, that you directed, yea delivered poison, and had continual intelligence how it wrought with him; fourthly, that after the fact you did all that a guilty conscience could do, in seeking a most exorbitant pardon, in burning letters, in suppressing of witnesses, and other such acts of guiltiness. The first two are mine, the other for my fellows. "My Lord, what greater proof of hatred, what of your jealousy and fear, than them w^{ch} you made, that if Overbury came out of the Tower one of you must die for it? And Overbury in one of his letters writes thus unto you: My Lord, your malice can not prevent me to write in the Tower of London," &c. Why was he committed by your means? and why, my Lord, did you not suffer him to be employed beyond the seas? Alas! Overbury had no such long hand as to reach from the other side of the sea into England, to forbid your banns or cross your love. No; there was some greater matter betwixt you two, and you know well *periculum periculo vincitur*, and accordingly practised against him. Here Mr. Attorney ended his speech and began to open his proofs. In the first place, First: Henry Paiton, late servant to Sir Thomas Overbury, who affirmed, he saw a letter of Sir Tho^s Overbury written unto the Earl of Somerset, wherein was written, "If you suffer me to die," &c. He affirmed further, that Sir Tho^s growing very sick after the receipt of the powder sent from the Earl, this examinant was sent from Sir Thomas to the Earl with a letter, which he delivered to Rawlins, the Earl's man at Whitehall, who going in with it to my Lord, my Lord presently came forth unto this examinant, and asked him how Sir Thomas Overbury fares, to whom this examinant answered, "Sick." "How sick" quoth my Lord. "Very sick" replied this exam^t; to whom my Lord again, "Very sick indeed?" "Yea, my Lord, in great danger of death, for he hath had threescore purges and vomits in one day;" at which my Lord of Ro-

chester cried "Pish !" and so smiling turned about and left this examinant.

Henry Davis, another of Sir Thomas Overbury's servants, confessed, that by letters which he had seen of his master's and the Earl's, he knew well that my Lord of Somerset dissuaded his master to go on the employment beyond the seas. These letters are lost by my Lord of Somerset having gotten them into his hands ; but of these letters which are extant, you shall, my Lords, [see] a wonderful harmony and content. Then a letter was produced written from Sir Thomas unto my Lord of Somerset to this effect, but with great wit and elegancy composed. "My Lord, is this the fruit of your love? shall I reap this for my faith and affection? Common secrets have common dangers. As a man, can you do thus to a man? I might well have observed your malice towards me by your behaviour and words, but my affection blinded me. Do not drive me to that which you and I shall be sorry for. If you continue thus, our friendship shall end; and I pray God you repent not this handling of me in the place where I distressed now write, though you perhaps, for some private respects in your own fancy, think it fit and safe thus to deal with me," &c.

Mr. Attorney. — These letters, my Lords, were found in a cabbonet delivered by my Lord of Somerset to Sir Richard Cotton. Upon which my Lord Coke,

Thus it is as Mr. Attorney informs, and for the strangeness of this discovery I cannot chose but acquaint your Lord^{PPS} with it. My Lords, Weston being arraigned and condemned at Guildhall as principal in this murder, the City being filled with rumours concerning this business, my Lord of Somerset having got into his hands all the letters of Northampton, Overbury, and others written to himself, thinking his own house might have been searched, and these found to witness against him, delivered a cabbonet of letters with this in it over to Mrs. Hornford, a gent of his special acquaintance, who, laying at one Mr. Holland's,

a merchant in London, put them into his custody. Upon a sudden, Sir Rob^t. Cotton sends for this cabbonet Mrs. Horneford requires them of Mr. Holland, telling him that they were evidences of her jointure. Holland, wondering at her earnest and sudden demand of them considering the rumours of the time multiplied, and happily knowing who had delivered them to her, denied to return them to her, but first intended to carry them to me. My Lords, it being then Sunday, I was, as my usual course is, at Paule's Cross at a sermon. Upon this notice he maketh haste unto my Lord Zouch, who, before he had opened the cabbonet, taking coach, was pleased, with Holland accompanying, to come to Paule's to me, from whence he and I presently departed, and both together opened the cabbonet, where we found this and divers other letters concerning this business. To which my Lord Zouch,

My Lord Chief Justice hath truly and well related the manner and circumstances of this discovery, which was very strange, and worthy to be observed.

A second letter was produced from Overbury to my Lord of Somerset, written, as it appears, after my Lord had replied to the former ; the effect whereof was, " My Lord, this paper comes with sure seal, and shall be bold to speak like myself, and what I myself would say if I were present with you. You told my brother, at his last being with you, that my style was unreverent, that I know not how to write as it befits me. Do you not know that all you have of wit, fortune, favour, or reputation, you are indebted to me for, by whose means you received it? and you will lose me, &c. I have been now prisoner this five months. Your excuses are many ; but these shifts will not serve to cover your falseness and preserve your vow. Have not we protested friendship of souls? and yet will you sacrifice me for a woman, and will you break this oath? You bid my brother advise me to keep your intents secret, and not acquaint anybody with them; but that shall not serve your turn; you and I will

come to a public trial, where it shall be known what things, what words, have passed between you and I. You visit your woman, curl your hair, and perfume your clothes, while I linger in prison: having sent me nineteen several projects, at last to send me a countermanding excuse, and slip out of town, and thus leave me betrayed by your own lust. Secrets of all kinds have passed. My mother, I understand, is grievously perplexed, wishing she might have but one sight of me, though she lay on the boards all night by me; but you have placed me where my enemies have free leave to play upon me, but not one friend admitted, to whom I might speak my last words. But know this, I have all this long vacation written your story, how I found you at the first, how I have lost all the great ones for your sake, what secrets I have partaken, and at the last, when you had won your woman by my letters and working, you juggled with me and thus betrayed me; how at Huntingdon and Newmarket you vowed I should not live at Court, nor with my friends; how treacherously you sent for me thrice that day wherein I was caught in this trap: this I have sealed under seven seals, whereof my friends shall know; and if you persist to deal thus inhumanly with me, I will leave you to die with shame."

Simcocks, an acquaintance of Weston's, witnessed upon oath, that Richard Weston using divers times to come to his house, and had often conference with him concerning my Lord of Somerset, told him he was employed by him, that he had received gold of him, that he could do much with him; amongst others he heard him say, that if Overbury came out of the Tower, one of the two must die.

Davis was again sworn, who witnessed that he had seen letters of Sir John Digbies, Ambassador in Spain, sent by my Lord of Somerset to his master Overbury unopened.

Next was read a confession of my Lord of Somerset, taken the 22nd of January, where, being asked who they meant by their strange names, he said that by Julius Cæsar

they meant the King; by Symides, Northampton; by Unc-tius, my Lord of Canterbury; by Cardinal Woolsey, the Earl of Suffolk, &c.

A letter was produced from Northampton to Somerset, written in the time of the discussing of the nullity, as appeared by the effect which followed.

“SWEET LORD,—The counsel on both sides is agreed, the libel is approved sufficient and good in law. I am glad to find ink and paper in this lady’s chamber, to acquaint you with this, &c.—HENRY NORTHAMPTON.”

Underneath, “I am a witness to this bargain, and have set to my hand.—Francis Howard.”

Then Mr. Attorney came to the proof, the second branch of his division, namely, how the Earl was principal in all means keeping him close prisoner.

The confession of James Franklyn was opened, wherein, amongst other things, he confessed, that, talking with the Countess, and demanding why she prosecuted Sir Thomas Overbury so extremely to the death, she answered that he would put them down.

The examination and oath of Sir Davie Wood was produced, who, being crossed in a suit by Overbury of 2000*l.* value, the Countess of Somerset hearing of it, sendeth for Sir Davie, and moved him to revenge, and tells him how and where; offering him 1000*l.* to kill Overbury, with a promise upon her honour to obtain his pardon; but he, not liking the assurance of his pardon, having it only promised upon her honour, desired it under Viscount Rochester’s hand, which being denied him, he refused to undertake it, and so the enterprise was quashed.

Sir Dudley Diggs, upon oath in Court, affirmed that Sir Robert Mansell told him at that time when Overbury was designed by his Maj^{ty} for foreign employments, that Overbury was of himself very willing to be an agent beyond the seas for the King, but Viscount Rochester dissuaded him,

pretending a necessity of his assistance in his swelling fortunes.

The examination of Robert Earl of Somerset, himself then prisoner in the Tower, taken 4 Febr^y 1615, was read, wherein the Earl confessed that he did persuade Overbury to refuse to be employed, whereupon he was imprisoned, and by this means kept in a close manner. Again he confessed that after he knew he was indicted, and the *billa vera* found, he drew a petition unto his Maj^{ty}, which he delivered to the Lieutenant, and entreated him to move the Lords to speak unto the King for mercy, humbly showing to his Majesty how he governed three kingdoms, and had infinite subjects, but few that might claim the prerogative of his Royal favor, among which few he was bold to think himself one; that he hoped his Maj^{ty} would not suffer him to have a public trial, for howsoever his own soul witnessed him clear for any such foul fact as murder, or consent thereunto, yet his consent unto his imprisonment in which time this happened, with other circumstances, being by the greatest force of invective and cunning wit urged against him, might so far prevail as the law might seem to extend unto him and find him guilty. This petition he humbly offered unto his Maj^{ty} for his wife and child's sake, but especially to keep his honor and reputation, which was much more dear to him than his life.

The examination of Sir Jarvis Helluish, the 23 of October, 1615, was read. This examinant confessed that Sir Thomas Munson told him that Sir W^m Wade was to be put from his Lieutenantship of the Tower, and that whosoever succeeded him must pay 2000*l*. for the place, which he persuaded Sir Jarvis to undertake, which Sir Jarvis accordingly did perform within a short space after, borrowing the most part of the money of Alderman Hellwish, his uncle.

Sir Thomas Mounson, examined the 25th October, confessed that he recommended Weston, at the entreaty of the Countess of Essex, to be Overbury's keeper, and further

affirmed that my Lord of Northampton was acquainted with it.

Richard Weston, examined the 18th of October, confessed that for a year's space and more, before his coming to the Tower, he was altogether employed in carrying of letters and messages betwixt Viscount Rochester and the Countess of Essex; contrary to which was produced an examination of my Lord of Somerset, taken the 28th of October, 1615, when being asked whether he ever knew such a one as Richard Weston, he answered that he did then know him; being asked how long he had known him, he answered, he never knew nor saw him before he kept Sir Thomas in the Tower; contrary to which was produced the examination of Symcocks, an acquaintance of Weston's, taken the 13th of October, 1615, who affirmed that long before Overbury's imprisonment he had private access to my Lord of Rochester and the Countess of Essex, and that Weston was often in hand with him to find some good suit worth the begging, for my Lord of Rochester had promised to grant him any reasonable requests.

And here Mr. Attorney desired the Lords to observe, how no declarations, confessions, or examinations of any party delinquent after attainder, were produced against the prisoner at bar.

Next, old Mr. Overbury, father to Sir Thomas Overbury, upon oath affirmed how he had many times, yea continually after his son's imprisonment, been an humble petitioner for his son's release, but was sometimes crossed by my Lord of Somerset; oftentimes delayed or persuaded by my Lord of Somerset not to seek to hasten his delivery, which for some reason that he knew and then pretended, would rather be a cause of his longer durance; how Mrs. Overbury grieved with her son's imprisonment, and in his sickness repaired to London, but with all the power of petitions, and other means, found none so favourable as to suffer her to visit her son, or at her return assure her of his release; howbeit

presently after her return, or upon her return, my Lord of Somerset wrote unto her, the effect whereof followeth:—

“Mrs. Overbury, I am sorry you do not carry home with you the content I wish, to have seen your son a free man; but before you come, I do not doubt but you shall be assured that all hinderances are removed, and that his good day is coming again.”

After which he shortly died; whereupon my Lord of Somerset wrote another letter to Mrs. Overbury, cloaking his past dissimuled malice under the colour of sorrow and offer of consolation, with great promises and protestations, to continue, yea increase his loving kindness and beneficial favours to him and his, the effect whereof briefly followeth:—

Mrs. Overbury, I have been slow to do this office, of all men most unfit to comfort you, being unhappily the cause of your great loss. His enemies wrought him in disgrace with the King his master for my sake, whose love nothing no man could work from me. I wish I could redeem him with any ransom; I wish I knew how to repay his faith, and give all you who in him have lost so much satisfaction. You shall find how well I loved your son living by my effects; being more willing to do all of you good for his sake than whilst he lived. I will shortly devise with you concerning your son in France, whose expences I will defray, and ease you of that burthen, and at his return take further time to provide for him; but I think it best that remain till this tempest be settled. I extremely desire the gentlewoman's pardon,” &c.

Next Sir John Lidcote, examined the 10th of December, came into the Court and again upon oath affirmed, that after Sir Thomas Overbury was imprisoned and close kept, he understanding that he was ill, became an humble suitor to some of the Council, especially my Lord of Rochester, that he might have leave to visit him. My Lord of Rochester, next

day after this petition, sendeth for Sir John Lidcote, and to him and Sir Robert Killegrave was a warrant sealed to visit Overbury, to whom they two repaired the next morning, and there found him alone in a weak and evil plight. After some conference, (all which the Lieut^t heard,) Sir Robert Killegrave taking his leave, Sir Jarvis went with him to the chamber-door, during which interim, Overbury whispering to Sir John Lidcote, demanded of him whether he thought that Rochester did not juggle with him; to which Sir John answered, he thought not. The Lieut^t looking back and perceiving them talking, told Sir John he had done more than he could answer; whereupon Sir John departed, and within a day or two returning again to visit Overbury, he was denied by the Lieut^t, who told him his warrant was countermanded. Afterwards he said he found my Lord of Rochester was the chief cause of his hinderance; especially one time talking with my Lord of Somerset concerning Overbury's misery and sickness, my Lord of Somerset fetched a counterfeit sigh, and presently smiling in his face departed. (This Sir John Lidcote married Sir Thomas Overbury's sister.)

Next after this was produced the examination of Sir Thomas Munson, taken the 5th of October, wherein he confessed, that, by the direction of Northampton and the Countess, he willed the Lieut^t to keep Sir Thomas close prisoner.

Davis, one of Sir Thomas Overbury's servants, was again in the next place produced, who humbly moving my Lord of Rochester that he might go unto the Tower to attend his master, offering to be close prisoner with him, which was answered by my Lord of Rochester that it needed not, for he doubted not but to have Overbury shortly totally delivered. I now, my Lords, (quoth Mr. Attorney,) am within kenning of my landing-place, and I must strike a few strokes more. Produce therefore the confession of James Franklyn, which followed next.

Who confessed he was a continual messenger from

Weston to the Countess of Essex, to acquaint her how Overbury fared, who, according as she heard from the Tower, sent the news presently to Court to the Lord of Rochester, and further said that he dares take his oath the Earl was guilty.

Next unto which followed the confession of Sir Jarvis Hellvish, taken the 26 of October, who affirmed that he during the time of Sir Thomas Overbury's imprisonment did at divers several times receive letters from the Countess of Essex to know how Overbury fared, alleging she must write to the Earl of it.

Another confession of my Lord of Somerset, taken the 3rd of May 1616, ensued, when being asked what letters he sent to the Countess of Essex in progress time during Overbury's imprisonment, he at first answered he sent divers, but none concerning Overbury; but afterwards he desired that it might be altered, since he did not remember, and perhaps some such letters were sent her; thinking (as Mr. Attorney said) that she had been executed, whereby it appeareth they were kept close and ignorant of all proceedings against them and trials concerning Overbury's death.

Then followed the confession of Paul de Lobell, an apothecary, who said that this examinant's brother brought him to Thibolls to Visc^t Rochester, who questioned with him concerning Overbury. Another time he inquired again, who answered, he might do the better if he were at liberty. The third time he sent for him to Whitehall, where in the private gallery he had private conference with him, and willed him to write to Doctor Maiot concerning physick to be given Overbury. He said he came to administer to Sir Tho^s Overbury the 25th of June.

A letter from Northampton was next opened, wherein he wrote to the Earl of Somerset after this manner: "Sweet Lord, I have spent two hours to prove the Lieu^t with so great a caution, that without doubt he will be very perfect in his part, to whom I will further impart concerning that

adventure. Two letters from Sir Thomas Munson are sped. So long as my wits can work, your directions, my Lord, shall come to effect."

In the last place of proof for conclusion to this point, succeeded another letter of Northampton's, mentioned before in the Lieut^{nts} arraignment, to this effect: "I cannot deliver without content how well the Lieut^t commented, only looking upon the text. I shall love him as long as I live the better for his conclusion: Overbury may recover, if you find him altered to do you better services; but the best is not to suffer him to recover, for he findeth in him much distemperature and strange flashes to such person as like this match. Your servant to be commanded, H. Northampton."

Then Mr. Attorney: My Lords, to these letters and others my Lord of Somerset sent answers but they are not now extant, for Sir R. Cotton having delivered them to him, he burnt them. Here Mr. Attorney ended his accusation, only with this memorandum to the Lords, that if amongst all those acts of my Lord of Somerset they found any one done eâ intentione to kill Overbury, it is sufficient in law to make him an abettor and procurer, and for them to find him an accessory before the fact.

Sir Henry Montague, without any great preamble or general narration, came to the proof of the third point, namely the stating of the fact. He spoke briefly to this effect: My Lord High Steward, and you the noble Peers, of all the facts w^{ch} I have known committed and received a public trial, I have not known, heard, or read of any one felony more foul, all things all parts considered, than this now in judgment; nor in so foul a matter did I ever see so fair, so favourable, so gracious a trial; yet is this man, this prisoner, incapable and insensible of this great favour; of which stupidity I can yield no reason, but that his hardness of heart is doubled upon him; and he that dares to enterprise so odious an evil, both to God and man, is not now

ashamed to persist in a careless regard what shall follow it. My Lord, it was yesterday well declared unto this Court by what strange and unlikely means this strange and secret plot, this mine of evil, was discovered; that which was so cunningly, so wittily, so powerfully comploted, as might well be termed, and so resolved by the agents a complete project, yet disclosed by a compliment. I can hardly pass over the manner of it, but it has been already told, and I will leave it a worthy praise to the worthy and great Secretary of State by whom these secrets were disclosed, this knot unfolded, and according to my directions I will briefly unfold the third point, whereof you my Lord of Somerset are accused, wherein I will not discourse as might move your Lord^p to find *res in verbis*, sed *per verba res*; for so, my Lords, by the words and writings of the prisoner I shall especially prove my accusation. Your Lady and mistress, the Countess of Essex I mean, kept a paper of the names of the eight several poisons appointed for Overbury: it was written in a Roman hand; I will not say it was yours, my Lord of Somerset, for that I cannot prove; but I will say and prove that you sent poison by which Overbury was poisoned: first, my Lord, a white powder, and afterwards im-poisoned tarts and jellies; which having sent, you afterwards inquired how he fared, &c. with them, and wrote unto your Lady and mistress wondering that it was not yet done &c., by which, my Lord, first I will manifest by all reasonable circumstances you meant the poisoning of Overbury, which manifested, will I hope satisfy your Lord^{ps} the Peers in this third point, viz. that my Lord of Somerset directed, yea delivered, poison w^{ch} Overbury received, that he had intelligence how it wrought, &c.

In the first place of proof for this third point was opened the petition of James Franklin, unto Cook, Chief Justice, and his examination taken thereupon the 16th day of November, being the same day that Sir Jarvis Helvish was arraigned, the effect whereof more at large appears in

Franklin's arraignment and Sir Jarvis's trial; but briefly thus much therein Franklin confessed, that he procured the poison for the Countess, that Sir Tho^s Munson was a continual messenger and carrier of letters from the Earl, the Lieut^{nt}, and others to the Countess; that he is persuaded Sir Thomas Munson did know of it. One letter which Sir Thomas Munson brought unto the Countess, he remembereth well, that it being not very fair written, the Countess gave it him to read, wherein was, "This scab is like the Fox," &c., mentioned before in Sir Jarvis's arraignment; whereupon he demanding of the Countess why she did prosecute Overbury with such deadly hate, she answered he would pry too far into the state, and if he should forsake my Lord of Rochester, he would clean put them down.

In the second place, the examination of the Countess of Somerset, taken on the 8 of January, was produced, wherein she confessed that she received all the poisons from Mrs. Turner, &c., that she kept them in her chamber at Whitehall, whither the Earl had oftentimes resort.

To this effect next came in another confession of James Franklin, taken on the 12 of November, wherein he saith that the Countess of Essex had a paper wherein the names of the eight several poisons administered to Overbury were written in a fine Roman hand, which the Countess continually kept. He further confessed, that the Countess of Essex would often say to this examinant, "When Tho^s Munson cometh from Court, we shall hear what is to be done," and again tell him how Overbury fared, and would often say unto him, "I fear Weston doth play the knave with us, and forgets to execute his part." This examinant further confessed that my Lord of Rochester did use to come to the Countess of Essex her lodgings at Whitehall, having this access by a straight long gallery in St. James's Park. For the sending of powders, in the first place was published,

The confession of Richard Weston, taken the 1st of October, wherein he freely confessed how, after the receipt of the powder which he administered the 3rd of June, Overbury grew very sick, with extreme vomiting and purging, w^{ch} powder this examinant confessed was poison.

In the 5th place, Henry Davis his oath was again produced, who answered, that about that time of June the Earl of Somerset did send this examinant with a letter unto Sir Thomas Overbury, and in it a white powder, wherein he signified unto him that it would make him sick, but he would make that a means to work his delivery. How this wrought with Overbury appeared before by Henry Payton's confession, mentioned in the first point by the Attorney-General and by Sir Thomas Overbury his letter to Rochester.

Next was produced the examination of Somerset, taken the 15 of October, wherein he said, that true it is he sent Overbury a powder at his own request, which was wholesome and good physic such as himself had taken, which powder he received from Sir Robert Killegrue.

But unto this opposed the examination of Sir Rob^t Killegrue, who the 3 of October affirmed that Rochester during the time of Overbury's imprisonment did send unto him 3 several times for a white powder, which Sir Robert Killegrue knew to be a very good and wholesome physick, the first whereof the Earl requested for Overbury: but he said the Earl told him that he had lost that first powder that he had sent him, whereupon he sent him a second which the Earl himself did take, as the Earl told Sir Rob. Killegrue. The third he sent him by Gadolphin to Beurley, which as he told him gave him but one vomit and 3 stools. And these were all that the Earl of Somerset had from this examinant, of which he never knew or thought that Overbury received any.

Concerning the tarts and jellies, first was opened the confession of the Countess of Somerset, taken on the 28th

of October, when she confessed there were no tarts nor jellies sent unto Sir Thomas Overbury, but only such as she herself or my Lord of Rochester did send, which appears by a letter of the Countess of Somerset to the Lieut^t, written after this manner:—"I had but one that came safe to me, one tart was broken, &c. I was moreover bid to tell you, that if he" (by which was meant the Earl of Somerset) "did send you any wine, you might drink of it, for in it were no letters, but of the tarts and jellies eat not; but if you send them to your wife, say they are for me, and keep them for me. Do this at night, and then all shall be well," &c. Upon which followed another examination of the Countess of Somerset, taken the 1st of January, when being demanded what she meant by letters, she answered she meant perhaps poison. Being also demanded, what she meant by this clause, "do this at night, and all shall be well;" she answered, "that if the tarts were given Overbury at night, then all should be well."

In the last place, to prove the Earl had continual intelligence how Overbury fared, and how the poison wrought with him, was produced the confession of James Franklin, taken the 22nd of November, wherein he confessed, that about a month after Whitsuntide, or thereabouts, during Overbury's imprisonment, this examinant being with the Countess of Essex, at Whitehall, she showed him a letter from Rochester, wherein he wrote, that he "wondered these things were not yet dispatched," that Overbury was like to come out within few days, &c., if Weston did not ply himself, &c.; in the dispatching of which business this examinant said, he knows well, was meant the poisoning of Overbury, for so the Countess at the reading of this letter said unto this examinant, "I fear Weston doth play the knave with us," &c., and thereupon presently sends this examinant to Weston to will him to come to her, who accordingly repaired to Weston, who, upon notice given without delay, the same afternoon repaired unto the Countess

of Essex at Whitehall. And with material proofs Sir Henry Montague ceased his accusation with this observation, that though in the proof of this point the testimony of delinquents was much used, yet no examination, no confession was produced after they were convicted, for that in law they will not be received; but a delinquent before conviction is the most evident, strong, and effectual witness.

Sir Randall Crew, another of his Majesty's Serjeants, undertook the proof of fourth point, unto which he entered with this preface: "My Lord High Steward, and you most noble Peers, I am now left the last opponent. I am to take up the last weapon against this wounded man, wounded not by the cunning of wits or by the strength of invectives, as this great Lord in his petition to his Majesty suggested, but by his own guilt, for out of his own mouth had he been accused, his own hand had disarmed himself, and left himself naked to shame and punishment. And now I behold you, my Lord of Somerset, methinks I hear the ghost of Overbury crying unto you in this manner, 'Et tu quoque Brute! Did not you and I vow a friendship of souls? did not you sacrifice me to your woman?' (my Lord, I speak as he wrote,) 'and are you thus fallen from me, or rather are you thus heavily fallen upon me to overthrow, to oppress him thus cruelly, thus treacherously, by whose vigilance, counsel and labor you have attained your honorable place, your estimation in the world for a worthy and well-deserving gent? Have not I waked that you might sleep, cared that you might enjoy? Have not I been the cabinet of your secrets, which I did ever keep faithfully, without the loss of any one to your prejudice, but by the officious, trusty, careful, and friendly use of them, have gained unto you a sweet and great interest of honor, love, reputation, wealth, and whatsoever might yield contentment or satisfaction to your desires? Have I done all this, to suffer this thus by you, for whom I have so lived as

if my sand came in your hour-glass? *Et tu quoque Brute!* But no more for this extreme and ignoble deception of faith and destitution of a friend. Was it a friend you only abused in this enterprise? was Overbury only wronged by your malice? died he the only injured person? No, my Lord; you much wronged, ungratefully regarded the Royal favor of a King, to ground so ill a building upon so strong a basis; for, my Lord, it must needs be, that a presumption of your greatness and power with his Maj^{ty} emboldened you to oppress and tyrannize over a subject. But thanked be God we have no such King as you might imagine; our Eagle will shadow no venomous fly under his wings, his supporters are first Religion and Justice, and then Sovereignty; and so, my Lord, now you find what you might ever have feared, if you left to be good, the King would leave to be gracious; for what you have heretofore known in others, you now feel in yourself—the impartial Justice of King James, of whom experience had made us confident to say, with King David, “He put on justice, and it covered him; he was clothed with righteousness as with a garment.” Joab was a great captain, a commander in Israel, yet was pulled from the horns of the altar for murder; and was it not ignoble presumption in you, my Lord, to imagine the King would protect you for the same fault? My Lord, when you had effected this bloody deed, you then began to fear; then began to find it true that there is no safety in doing evil, for the snare which they have laid, the pit which they have digged for others, they themselves are fallen into. This, my Lord, I say you found in your own conscience; and, as Adam, when he had eaten of the fruit of the forbidden tree, with the broad leaves of the fig tree he thought to cover his nakedness, so you, my Lord, by all close and secret practices, sought to veil this mischief, to hide it from the eyes of the world, following Adam one step further into the thicket.” Then he came to his proofs of the fourth point, which consisted of these three parts:—

1. That the Earl of Somerset practised, by all indirect means, to suppress all testimonies that might discover the fact.

2. That he burnt and misdated all letters concerning this business.

3. That he obtained a general pardon for all manner of treasons, felonies, &c.

1. Proof: It was said, that by the counsel of some agent in this business, Weston was at first persuaded to stand mute; whereupon, no principal in law being attained, all the other, being but accessories, could not receive any legal trial.

2. The oath and free confession of Laurence Davis, Sir Thomas Overbury's servant, was produced, who said, that after Sir Thomas Overbury died, he became an humble suitor to my Lord of Somerset, to receive him for his servant; but the Earl never listened to him, nor did he ever receive any kindness for his dead master's sake until not long before the progress, last summer, the Earl of Somerset sent one Rawlins, his servant, unto this Davis, to desire of him from my Lord all such letters, copies of letters, and other writings as had heretofore passed betwixt the Earl and Overbury, pretending some special and private cause; thereupon he delivered to Rawlins all the letters that he then had, to the number of thirty or thereabouts. Afterwards, two or three days before the Earl was committed, he sent for this Davis, and gave him 30*l.*, as he told him, at the request of his servant Rawlins. "And true it is," quoth the Earl to Davis, "I have heretofore been moved to retain thee, but out of sight out of mind, and so I forgot thee; but now I will remember thee. Hast thou any more writings?" Davis answered, "Only two or three in the country," which my Lord willed to bring him out of hand. Upon this confession, it was observed by Crew, that till my Lord had occasion to use this Davis to keep close his secrets, he never regarded him, nor showed him any favour; but so soon as he began to fear a discovery, and knew this Davis might be

an instrument to lay his wickedness open, then did he with words, with gifts, and all subtile endeavours, seek to stop his mouth and to tie his hands.

3. The warrant was produced, which the Earl sent about two or three days before he was committed by a pursuivant and one James Bradford, directed to one John Poniter, a constable in London, commanding him to enter the house of Richard Weston, and there to fetch out of a cellar in the said house a trunk of writings, &c. Upon which warrant the constable at first doubted whether he might enter and break up a house, till it was afterwards again enforced by a second message from my Lord of Somerset, which, commanding him as if the business concerned the King and the State, the constable desiring the warrant to keep for his own security, was at the first denied it by the pursuivant, but afterwards he delivered it to him; whereupon the constable, the pursuivant, James Bradford, a smith, and others, entered into Weston's house, and in the cellar found such a trunk as was mentioned in the warrant, opened it, and, looking over some papers, the pursuivant, espying the names of Mrs. Turner, Overbury, and divers others in them, shut the trunk presently, and said he would carry them to the Earl himself, which he performed accordingly.

4. The examination of Sir Robert Cotton was read, taken the 2nd of December, whereby appeared how the Earl of Somerset got into his hands his own letters written to Northampton; for so Sir Robert Cotton then confessed, that, after the death of Northampton, being admitted to peruse and oversee all the writings, books, and papers in the Earl of Northampton's study, he, amongst other papers, had collected thirty several letters of the Earl of Somerset to Northampton, which he, upon request, delivered to my Lord Treasurer, who sent them to Somerset, who burned them some two or three days before he was committed.

5. The examination of the Earl of Somerset was produced, wherein he confessed the delivery of divers letters

and other things in a cabinet to Sir Robert Cotton [this was the cabinet before mentioned], and that Sir Robert Cotton told him they might be so dated as might clear the prisoner if he were called in question about them; and he further confessed that he did cut off some parts of them, and put out some words, &c., and all this was confirmed by the confession of Sir Robert Cotton himself; and, indeed, when the foresaid letters were shown, all the dates of them were written in Sir Robert Cotton's hand; for the Earl of Somerset, Northampton, and Overbury did never use to date any letters which passed between them. Amongst these letters thus antedated and mangled by Sir Robert Cotton, one letter especially was noted concerning the white powder, which my Lord of Somerset sent unto Overbury, wherein Overbury writ to Somerset that the powder had wrought well with him, &c., but that he meant to take no more; which letter was so dated as it might seem to have been the powder which he had received from Sir Robert Killegrave; but it could not be so, for the Earl received but three powders from Sir Robert Killegreu, the first whereof he told him he lost, the second the Earl took himself, the third, as it showed, he sent to Overbury by Rawlins, which gave him but one vomit and three stools; but there was a fourth which was sent by Davis, and fell out of the letter into his pocket, which Franklin confessed was a violent poison, and so it seemed by the operation of it as before appears.

6. Lastly was produced the copy of the pardon, which, by the confession of my Lord of Somerset and Sir Robert Cotton, my Lord of Somerset did seek to keep himself free from all dangers that might happen unto him, and this pardon Sir Robert Cotton counselled the Earl unto, being a thing granted in like nature heretofore unto other favourites of kings, as he pretended by Edw. III. and Hen. VIII. But upon this Sir Randall Crew observed, that in those pardons which they took for patterns, the

course was to mention the greatest offences, as contempt, trespass, &c.; but in this pardon they began with the least, and mingled the great crimes as if they would shuffle them in undiscerned, contrary to all patterns of pardons heretofore in what kind soever. And here Sir Randall Crew desired one particular to be regarded, that this very fact (accessory before the fact unto poisoning) was one of the branches of his pardon; and with this observation he ended. Then the Lord High Steward spoke briefly to the prisoner to this effect:

My Lord of Somerset, you have plainly and orderly heard your accusation. As Festus said unto Paul, "Speak boldly, for we will hear thee this day;" so, my Lord, I say unto you, be not troubled with yourself to imagine your answers shall be abridged by time. It is indeed very late, but we will borrow some hours of the night, we will think no time too long, so long as you shall be able to reply; but I pray you, my Lord, spare frivolous circumlocutions, forbear to enter into any other discourse concerning yourself, the state, and others. The thing whereof you are accused is only Overbury's death, the allegations and evidences only such as tend to prove you accessory before the fact. Whatsoever you can say to clear yourself of this murder, in the name of God speak freely and fully; you shall be heard with all patience at large.

The Lord High Steward having thus spoken, the prisoner at the bar made answer to those things that had been urged against him, but very confusedly, insisting most upon those particulars that were least material.

1. For the objection of Sir Dudley Digges, Paiton, Sir Ro. Mansil, and others, whereby he was accused to have been the special hinderer of Overbury's employment beyond the seas in his Maj^{ty's} service, he confessed he was indeed the chief cause that Overbury was not employed; he said he did move the King to send Overbury in ambassage, yet privily persuaded Overbury to deny to serve in

that nature. His denial he knew would bring his imprisonment, which he further acknowledged was his special scope and aim.

2. Whereas divers letters of Northampton's to the prisoner and to Sir Jarvis, mentioning a plot concerning Overbury, were produced, by which he was charged to have consented with them to his poisoning, he replied, true it is, he did plot with Northampton concerning Overbury, how to imprison him, and in prison to keep him close debarred from the access of friends, as had been urged against him; but, he said, by this plot whereof Northampton wrote unto this prisoner, nothing was understood by this prisoner beyond the imprisonment of Overbury, and especially to make him unable to cross or any way hinder his intended marriage with the then Countess of Essex, to which by evidence then in Court produced, but out of his own private knowledge more strongly was manifested, how deeply, how insolently Overbury opposed himself; with what opprobrious and dishonourable terms, with what mind he kindled the fire of revenge in some honorable breasts (as indeed what could be less expected). If Northampton, the Lieutenant, Frances, (for so he termed his wife,) or any other of the executed persons during the time of his imprisonment, consented in any other contrivance of his death, it was more than ever this prisoner knew or conceived to be plotted, and therefore he humbly desired their Lordships the Peers to consider, that many circumstances, grounded and agreeing with his consent unto the imprisonment, might induce them to conjecture him guilty of the greater mischief that happened to him in durance, yet he remained innocent and free from any such imagination. He was not Overbury's jailer, nor was he kept so close but others unknown to him might closely compass his death.

3. Unto Northampton's letter in particular, where he wrote to this prisoner, "I like the Lieut^{ts} conclusion well, he may recover or not," &c.; he answered, what passed be-

twixt the Lieut^t and Northampton he knew not, neither understood he what Northampton meant by the Lieut^{rs} conclusion.

4. The confession of Franklin, who said he dares take his oath upon the Bible, that I consented to Overbury's death, who further said that I was in an inner room, as he knew by my voice, at Whitehall last Michaelmas, when Frances sent for him to tell him that Weston was apprehended, who yet again affirmed that he had seen divers letters of mine unto Frances during the progress and Overbury's imprisonment, concerning plots and businesses, &c., the prisoner humbly moved the Peers to conceive, that, being the most affectionate to Frances, the means how they might lawfully enjoy the marriage-bed being then consulted, he had much occasion to write unto the Countess, of secrets of moment, perhaps concerning Overbury, yet not coasted on the red sea of blood or death, which that perjured Franklin (by a letter of mine which he avouched he did read) did prove without all contradiction. The letter was urged by you, Serj. Montague, namely, that Overbury was like to come out within these few days, if Weston did not play his part, &c.; whereupon the Countess sent for this Franklin. If this letter, quoth the prisoner, be to be produced, if Frances ever confessed that I did ever send such a letter unto her, I am then guilty and convicted without excuse; but I call heaven now to witness, I never wrote any such letter, neither can any such be produced. Let not you then, my noble Peers, rely upon the memorative relation of such a villain as Franklin; neither think it a hard request, when I humbly desire you, &c. to weigh my protestations, my oath upon my honour and conscience, against the lewd information of so bad a miscreant; for, my Lords, both in his life and death he proved himself atheistical.

5. Concerning Weston, the Earl denied that ever he did know the man before such time as he was keeper to Overbury in the Tower, and so (upon examination of the Earl,

taken the 28th of October) he averred; and whereas the oath of Simcocks, an acquaintance of Weston's, and the confession of Weston, were urged by Mr. Attorney and Serj. Montague to the contrary, he answered, that Weston might perhaps have brought him letters from Frances, when she was Countess of Essex, but never delivered them to himself, but to some of his servants that attended at his chamber, and therefore what Weston confessed, in other things as in this, was like to be untrue; but this was but a color, for it was before proved that Weston was not only a carrier of letters betwixt Rochester and the Countess of Essex, but also a messenger, and had private conference. Concerning the tarts and jellies, he said, perhaps he did send some unto Overbury, but those that he sent were good: and whereas Frances did write unto the Lieut^t that she was bid to bid, as before is mentioned, he was ignorant what she did write, or how she disposed them.

6. Concerning the powder, he answered it was impossible that it should be poison, and that he would prove by a letter of Sir Thomas Overbury himself there in Court, wherein he wrote to the Earl that the powder he sent him wrought very gently and well with him, and that he would take no more. Upon this the Earl declared very long; but he that well observed how it is proved against him before shall easily find the truth by the misdating of a letter, for when it was pressed against him that the powder which he sent by Davis was a 4th powder, and could not possibly be any of them which he had received from Killegrave, he was much perplexed, and still kept anchor-hold by the letter, having continual recourse unto it, not being able to tell from whom he had the powder which he sent by Davis, which how it wrought with Overbury by Davis and others appeared.

7. For the warrant to the constable to search Richard Weston's house, and to fetch thence a trunk, he replied that his wife Frances came unto him at that time, and told him that there were in Richard Weston's house, in a trunk, cer-

tain writings and evidences of lands and such things, which trunk concerned Mrs. Mary Hynder, who, as I take it, was Mrs. Turner's sister, for which she entreated the Earl to send his warrant; he, willing to have some other Privy Councillors join with him, sent to my Lord Knowles, but he was before gone to the Council-table. Doubting, therefore, whether one Privy Councillor's hand were sufficient warrant for a constable to break open a house and trunks, he asked his secretary whether one Privy Councillor's hand would serve for such a business, who resolving him it would, he signed the warrant; but he that before observed the proof of this point by the constable, the pursuivant, and Bradford, shall find the colour of this answer. For the petition which he sent unto his Majesty since his imprisonment in the Tower, he answered that he knew himself clear as he there protested, but he doubted the success of law; and for that word mercy, he desired the Lords to consider to whom he wrote?—to a King; and how? in way of petition; both which required a submission, which might in many cases be offered rather with a colour of need than out of necessity: nor is he always to be blamed that maketh himself seem guilty, but he that is so indeed; but besides this shadow, he answered, that having perused this petition, he told the Lieutenant that this word mercy might in his judgment be tempered or rather altered, and some other word that might more gently move a Royal favour be placed in this room; but the Lieutenant conceived it well befitting him, upon whose approbation he let it pass. The dating of the letters he did not deny, but said Sir Robert Cotton did persuade him so to do, telling him they might be so dated as might clear him of all imputation.

8. Concerning the pardon in the last place he answered, that he first sought it by the motion and persuasion of Sir Robert Cotton, who told him in what great danger so great persons honoured with so many Royal favours, and so many great and trusty officers of state, were in danger to forfeit

either life or goods by attainder, premunire, or other course of law, withall telling him that it was usual for such persons as he was to have large and ample pardons ; whereupon the Earl advising, desired Sir Robert Cotton to seek out a pattern of the greatest and largest pardons heretofore granted by the King of England, who accordingly did so, to whom the Earl said he referred the drawing and the whole despatch of it, not giving any directions for the form of the pardon, not being acquainted with the manner and words of it. But this by Sir Robert Cotton's confession, who at first was withstood by Mr. Solicitor, when he came to require such a pardon, and after returned with a more strict command, having first acquainted the Earl with the Solicitor's doubt or rather refusal by the circumstance of time, when that was sought, namely, when the Earl knew this matter was in question, with the great probability of common sense and reason, that a man should not be ignorant of a matter so much concerning him as a pardon so general and secure, unveiled this truth, and showed the colour of his defence, with which he ended.

THE EARL OF SOMERSET'S DEFENCE, FROM NIKOLAS OLDSWORTH'S
BOOK IN THE BRITISH MUSEUM.

Earl of Somerset's Answer.

I am confident in my own cause, and am come hither to defend it. And in respect the King's Counsell have been so long in speaking against me, that neither my memory nor notes will give me leave to answer every particular in order, I will beginn with some of the last things that they seemed most to force against me, and so answer the rest that I think doe, any way at all, touch me.

For the powder that was sent Sir Thomas to make him sick, that so I might have the better occasion to speak for him to the King, he (for that purpose) himself desired it.

And though it be true that I consented to his imprisonment, to the end he should make no impediment in my marriage, yet I had a care of his lodgings, that they should be where he might have the best air, and windows both to the water and within the Tower.

Whereas the breach of friendship betwixt Overbury and me is used for an aggravation against me, it is no great wonder for friends sometimes to fall out, &c. Once my Lord Cecill, Earl of Salisbury, sent for Thomas, and told him that if he would depend upon his favour, he would presently help him with a suit that should benefit him 2000*l*., which presently Overbury, coming to me, told me of; to which I answered, he did not need to rely upon anybody but me, and that, if he would, he might presently command my purse, and presently have more than that. And so he had. Yet, afterwards, upon some causeless discontent, in a great passion he said, that his love to me had put him out of my Lord of Salisbury's favour, and made him lose 2000*l*.

For the great trust and communication of secrets between Overbury and me, and for the extracts that he took out of Embassadors' letters, I confess this; I knew his ability, and what I did was by the King's permission.

Whereas it is urged that I caused him to refuse the employment that was imposed upon him; it is not so, for I was very willing he should have undertaken it.

Whereas it is pretended that I should cause poysoned tarts to be sent him to the Tower, my wife, in her confession, says, that there were none sent him but either by me or her, and that some were wholesome and some not, and that she sent him unwholesome ones; then it must needs follow that the good ones were those which I sent, and the bad her's.

Lord Lisle putts in.—If you had sent him good tarts, you should have seen them conveyed by a trusty messenger than Weston or Mrs. Turner.

Lord Compton.—My Lady, in her letter to the Lieutenant,

writes, "I was bidd to bidd you doe this." Who should bidd her but you, my Lord?

Somerset goes on.—If Franklyn know me so well, and that I was privy to the plott, why should then my wife and I, (as he pretended,) when he was there, speak so closely, and always out of his hearing? But for Overbury, my furthest intent in his imprisonment was, that he should be no impediment to my marriage; and this I communicated to my Lord of Northampton and Helvash.

Serjeant Mountague.—You could not couple yourself worse than with them two.

Somerset goes on.—What I understand of the Lieutenant's conclusion, which my Lord of Northampton relates in the end of one of his letters to me (that death is the surest way), I wish that my answers to those letters were now to be seen; and if I had ever thought those letters of my Lord of Northon dangerous to me, it is likely I would never have kept them.

For the warrant I made, my wife desired me to doe it for Mrs Turner's sake. Parker formed it, and told me that I might doe it, as a Councelour, alone without other hands; for I would have had, at that time, my Lo. Knowles joyned with me; and when this warrant was sent, I was not commanded from Court, as is pretended.

Lord High Steward.—All the Councill together could not justify the making such a warrant.

Somerset proceeds.—For my endeavouring to get a pardon, having had many things of trust under the King, and the custody of both the seales without particular warrant, I desired by this means to be exonerated. And for all general words, the lawyers put them in, without my privity.

For the declaration which I lately sent to the King, I did not think to have it thus sifted; but I therein did, in all humility, so farr endeavour to humble and yeld myself, that the King might the better express his grace.

The King's Attorney speaks.—May it please your Grace, my Lord here has had a most gracious hearing; and has behaved himself modestly and wittily.

Lord High Steward.—If you have any more to say (my Lord) you shall be heard at length: we will not streighten you with time.

Somerset.—For Sir Robert Cotton, I wish he were here, to clear many things that now be obscure.

Mr. Attorney.—If he were here, he could not be sworn, for reason of state, being held for a delinquent.

Somerset.—Whereas the shifting of officers is urged against me, as to make the more easy way for Sir Jervase Helvash's entrance; it is well known the reason of Wade's displacing was in respect of his carelessness, in suffering the Lady Arbella to have a key, by which she might convey herself out of prison. More I cannot call to mind, but desire favour.

King's Attorney speaks.—It has (my Lord) formerly, &c., &c., &c.

CHAPTER III.

MANUSCRIPTS CONTAINING MATTERS RELEVANT TO THE
CHARGE OF POISONING SIR THOMAS OVERBURY.

THE subject of the present chapter is an inquiry into some matters relevant to the charge against the Earl of Somerset, which are not to be collected from the reports of his trial, and which are found chiefly in the unpublished manuscripts deposited in the State Paper Office.

It will have occurred to the reader, on perusing the reports of the trial of the Earl of Somerset, that it would have been very important to have known whether any medical men of eminence and high character visited Sir T. Overbury, and to have ascertained what were their opinions concerning the state of his health. If the Earl of Somerset prohibited such persons from visiting Sir T. Overbury, or if, on the other hand, he was instrumental in facilitating their attendance upon him, these would surely be circumstances relevant to the question of the Earl's guilt or innocence. Moreover, the opinions of distinguished physicians regarding Sir T. Overbury's state of health at different periods would have thrown

considerable light on the question of his having been poisoned at all, or of his having died from other causes, whether violent or natural.

From the Earl's trial we collect, (but it is only by implication, the evidence having been adduced with a different object), that Sir T. Overbury was seen in prison by one of the King's physicians, and likewise by Sir R. Killigrew, a medical man, and by the apothecary Lobell. The King's physician, who was sent to the Tower for the purpose of visiting Overbury by the express direction of his Majesty, does not appear to have been examined at all. Neither Sir R. Killigrew nor Lobell is asked whether Sir T. Overbury exhibited any symptoms of being poisoned.

The following documents, now published for the first time, show that the celebrated physician Mayerne prescribed for Sir T. Overbury during his imprisonment. Mayerne had been physician to King Henry IV. of France, and had been invited over to England by King James, in order to be his own physician. Several of Mayerne's medical remains are extant, which contain very circumstantial and elaborate statements of the cases of the patients whom he visited. It was his custom to note down a variety of minute circumstances regarding his patients, which are sometimes ludicrous on account of their particularity. His memoranda comprise very minute details concerning King James's physical peculiarities; as, for instance, that the King

had a diarrhœa in the spring and autumn, the return of which was always preceded by his looking with suspicion on every body; and that he concealed hurts with which he often met in hunting, for fear of being pressed to take physic.

Another of the King's physicians, Dr. Craig, appears, from the following papers, to have been admitted to visit Sir T. Overbury, by the express orders of the Earl of Somerset, and also of the Earl of Northampton.

Lobell, the apothecary, was a Frenchman, and was placed in immediate attendance on Sir T. Overbury by his countryman Mayerne. He saw the dead body. The clyster alleged to have contained corrosive sublimate, which was the only imputed cause of Sir T. Overbury's death at all proximate to that event in point of time, and which was stated (or rather related to have been stated) by Weston to have actually killed Sir T. Overbury, was by the like evidence said to have been administered by Lobell or one of his assistants.

It will appear from the following documents, that, if credit be given to Lobell, Sir T. Overbury died of a consumption. Mayerne's prescriptions, which Lobell delivered to Sir E. Coke, probably confirmed that opinion, or they would have been produced at the trial. This part of Lobell's examination was suppressed, though his testimony upon other points was adduced against the Earl of Somerset on his trial.

It has been noticed that the printed report omits a fact contained in the manuscript report, that the Earl of Somerset wished Lobell to write to Dr. Mayerne concerning physic to be administered to Sir T. Overbury. The documents about to be set forth will further show a very curious piece of evidence, tending to create a suspicion that Lobell, in fact, poisoned Sir T. Overbury. If this were the case, the connection between Lobell and Mayerne, and between Mayerne and the King, would tend to throw some new light on these mysterious transactions.

Wilson, who, from being the intimate friend of Lord Essex, the Countess of Somerset's injured husband, is entitled to peculiar attention in regard to the transactions under consideration, relates that the discovery of Overbury's murder arose "from the apothecary's boy that gave Sir T. Overbury the clyster falling sick at Flushing, having revealed the whole matter, which Sir R. Winwood, by his correspondents, had a full relation of."

Sir A. Weldon confirms Wilson, and is still more particular in his narrative of the discovery of the plot; for he mentions that the name of the apothecary's boy was Reeve, and that he was afterwards an apothecary in London, and "died very lately." And he relates that Thoubal, the foreign agent, would not commit the story he had heard to writing, but only informed Secretary Wynwood that he had a secret of importance to communicate if a licence for

his returning to England could be obtained, which was accordingly granted.

Sir F. Bacon, at the Countess of Somerset's arraignment, gives a more improbable account of the discovery of the plot:—"About the beginning of the last progress it first brake forth; and as all murders are strange in their discovery, so this was *miraculous*, for it came out in a compliment; thus: my Lord of Shrewsbury, who is now with God, commanded Sir J. Elwes to a Counsellor of estate; and it was by him that Sir Jervas, in respect of the good report he had heard made of his honour and worth, desired to be made known unto him. That Counsellor answered, that he took it for a favour from him; but withal added, there lies a kind of heavy imputation on him, about Overbury's death: I could wish he would clear himself, and give some satisfaction in the point. This my Lord Shrewsbury related back, and presently Elwes was struck with it, and makes a kind of discovery, that some attempts were undertaken against Overbury, but took no effect, as checked by him. Though the truth be, he lacked rather fortitude in the repulse, than honesty. This Counsellor weighing well this narration from Elwes, acquainted the King with the adventure; who commanded presently that Elwes should set down his knowledge in writing, which accordingly he did, but still reserving himself within his own compass, not to touch himself, endeavouring rather to discover others, than any

else should undertake that office and so accuse him."

In a letter remaining in the State Paper Office, dated the 15th of November, 1615, Lord Cecil wrote to Mr. Wake in these terms: "Not long since there was some notice brought unto me that Sir T. Overbury was poisoned in the Tower; with this I acquainted his Majesty." The letter is full of news and gossip, and, therefore, if Bacon's account of the discovery of the plot were true, it is, perhaps, likely that the *miraculous* circumstances of it would have been mentioned by Cecil to his friend.

It will naturally be asked, why was not Mayerne produced as a witness at the Earl of Somerset's trial? Why was not Lobell interrogated more particularly as to the cause of Sir T. Overbury's death? Why was not the imputation cast upon Lobell of having been concerned in poisoning Sir T. Overbury probed to the bottom? Why was not the relation attributed to Weston, that an apothecary poisoned Sir T. Overbury with a clyster, for a reward of 20*l.*, further inquired into in any of Weston's or Franklyn's numerous examinations? If the reader thinks that there are grounds for suspecting the truth of Sir F. Bacon's narrative of the discovery of the plot, (owing, according to his statement, to an introduction merely complimentary that was said to have passed between a deceased nobleman and an anonymous Counsellor of estate, which story, therefore, could not be easily confuted,) why was the true history of the discovery concealed?—a question

of more pregnant importance, seeing that authorities concur in attributing the discovery of the plot to the confession of an apprentice of an apothecary placed in charge of Overbury by the King's chief physician.

The inquiry into these matters is more particularly considered in a subsequent chapter, with reference to the conduct of King James; but the papers about to be transcribed are so far relevant in this place, as they indicate that Somerset, the supposed poisoner, was willing that his victim should be visited by the King's doctors: They also awaken a suspicion, that, if the circumstances of Overbury's death had been minutely inquired into, it would have been found either that he did not die of poison, or that, if he did, some important circumstances connected with his death were studiously kept out of public view.

The documents to which the preceding observations refer are as follows:—

Mr Doctor Craig, whensoever Sr Thomas Overbury shall desire you to come to him, the King is pleased you shall go. This the Lieut^{nt} will not refuse for a warrant, if there should be any question made of the worth of this: if your own word may be taken, you need not show this. I pray you let him have your best help, and as much of your company as he shall require. So I bid you farewell, and rem. your loving friend,

ROCHESTER.

[Indorsed] My Lord Rochester for Dr Crayge. Access to Sir Tho. Overbury.*

* State Paper Office; Domestic Papers, 1613, June or July, No. 73. The original is written entirely by the Earl of Somerset.

Good M^r Lieutenant, the King's pleasure is that M^r Doctor Cragge, this bearer, shall be admitted to Sir Tho^s Overbury, that during the time of his infirmity he may take care of him, and as often as in his judgment to this end he shall find reason.

Old M^r Overbury's petition contained another request, which is for the access of a servant, which His Maj^{ty} thinks good to suspend for the present.

Thus with my best wishes I end this, Thursday at 12.

Your very loving and faithfully assured friend,

H. NORTHAMPTON.

[Indorsed in Sir G. Helwiss's hand] The Lo. Nor. for D^r Cragg to Sir Tho^s Overbury, to see him so often as for his health he shall think fitting.*

The Examination of Paul de Lobell, Apothecary, taken this 3 of October, 1615.

He said that Sir Tho^s Overbury was sick of a *consumption*, and that he never ministred any phisick to him, but by the advice of Mon^r Mayhorn, for which he had his hand, and doth *yet remain in writing*, what phisick in every particular thing was given him, which now he *delivered to the hands of the Chief Justice, containing 28 leaves or pieces of paper*, great or small, which is all the phisick that this examinant ministred to him.

But said that when he came thither he saw sometimes waters, and other things, which he the said Sir Thomas had not from this examinant, neither knoweth he from whom he had them.

* Brit. Mus., Bibl. Cotton., Titus B. vii., fol. 483. This original letter, in Lord Northampton's handwriting, is not transcribed in Winwood's "Memorials;" though the collector has transcribed two other letters of Northampton, which he has accompanied by a note, in which the imputations against the Earl may be thought to be weakened by this letter.

And said that he saw plasters upon his back when he was dead, which he had not from this examinant, neither knoweth what those waters, plasters, or other things were ; neither did Sir Thomas Overbury ever tell this examinant of them.

And utterly denied that ever Sir Thomas Overbury found fault with him for having threescore stools and vomits, or charged this examinant that he had hurt him.

And denied that Sir Tho^s Overbury had ever any plaster of him for any sore, either on his head, back, or feet.*

The Examination of John Woolf Pomler, Apothecary, a Frenchman, taken this 5th of October, 1615.

He said that he was never appointed to minister to Sir Thomas Overbury ; but, at the commendation of Mons^r Maierne to the King, Paul de Lobell was appointed, because he dwelt near to the Tower, in Lyme-street, to minister such physick as Mons^r Maierne should prescribe. And said that he did not write to the Lieutenant about his admittance to minister to Sir Thomas, or that it was the King's pleasure he so should do, neither did this examinant move his Maj^{ty} ever for Paule de Lobell.†

The Examination of Edw. Rider, all of his own handwriting, taken this 9th of Nov^r 1615, upon his oath.‡

About the beginning of the term I had occasion to go with my mother unto Doctor Lobell's house, a walled one, where, when I had received my mother's rent of M^r Lobell's wife, M^r Lobell begun to question with me about the death of Sir Thomas Overbury, and asked me what I did hear of it ; unto whom I answered, that I heard no

* State Paper Office ; Domestic Papers, 1615, Oct. 3, No. 168.

† State Paper Office ; Domestic Papers, 1615, Oct. 5, No. 176.

‡ This heading is written in Sir E. Coke's handwriting.

speech of it. Whereupon he begun to discourse about the proceedings of my Lord Chief Justice concerning the death of the said Sir Thomas, saying that they went about to prove him poisoned; but, said he, *he was not poisoned, but died of a consumption* proceeding of melancholy, by reason of his imprisonment; speaking very hardly against those that went about to prove Sir Thomas to be poisoned, saying that the clyster which they pretend was the cause of his death (for which his son was called into question) was prescribed unto him by M^r Doctor Magerne, the King's doctor, and that his son had made it according to his directions (not once speaking of his man to have any hand in it); and used very reproachful words, saying that our English doctors were all but fools, speaking wildly of D^r Butler and others, as also of M^r Chamberlyne, the Queen's chirurgion, who doth not like the proceedings of Mons^r Magerne, whom Doctor Lobell commended to be the bravest doctor, and that there was never a good doctor in England but Magerne; to whom I answered, that I had heard otherwise in Paris, that he was indeed a braver courtier than a doctor; but he continued still in his commendations, dispraising all others; and so after other to the same effect we departed.

About a week after, I went abroad with my wife about some business, and by accident we met with Dr. Lobell and his wife, near unto Merchant Tailor's Hall; where, after salutations on both parts, I asked him what he now did hear about the death of Sir Thomas Overbury, telling him that now it is too manifest that he was poisoned. I also told him that I heard it was done by an apothecary's boy in Lime-street, near to Mr. Garret's, speaking as if I knew not that it was his son's boy, although I knew that it was his son's boy that did the deed; and M^{rs} Lobell standing by, hearing me say that he dwelt by M^r Garret, and that he was run away, she, looking upon her husband, said in French, "Oh! mon mari," &c., that is, "Oh! husband, that was William you sent into France," (or to that

effect), whom she said was his son's man; whereupon the old man, as it seemed to me, looking upon his wife, his teeth did chatter as if he trembled, which stroke me also into a quondary to hear her say so; whereupon I asked him if he did send him away, and he answered me, that he sent him by a letter unto a friend of his in Paris, saying that he knew not the cause of his departing from his master, except it were for that his master used him hardly; which was strange to me, that he should give him a letter of commendations unto a friend of his in Paris, and not to know of his son the cause of his parting, and it made me conjecture that he indeed did know the cause of his departure. Again I asked him whether the boy was an Englishman or a stranger? He answered me he was an Englishman, and his parents dwelt in Friday-street, and that they did speak to him to write to some friend by him, where he might be to learn the language; but of the boy running away he never spoke, neither can I hear that he run away before this act done; and so we parted.

M. EDWARD RYDER.*

Secondly. It would seem to have been very important for an impartial investigation of the charge against the Earl of Somerset, to have inquired what means had been afforded to any of Sir T. Overbury's relations of examining his body after death. All the evidence that could have been procured as to the post mortem appearances should have been collected; and then medical witnesses should have been examined as to the inferences which might be drawn from such appearances. From the statements of counsel at the different trials, it might be supposed that no relative or friend

* State Paper Office; Domestic Papers, 1615, Nov. 9, No. 276.

of the deceased had been allowed to see his body ; that the body bore unequivocal marks of poison ; and that no coroner's inquest had sat upon it. As to the last point, it was ambiguously alleged that there had been no coroner's inquest " which could be found."

It has been seen that Lobell, the apothecary who had attended Sir T. Overbury during his imprisonment, saw his body after his death, and could, doubtless, have given material evidence upon the point under consideration. From the following documents it will appear that a coroner's inquest did, in fact, sit upon Overbury's body ; and that Sir J. Lydcote, brother-in-law of Sir T. Overbury, and other friends of the deceased, were particularly invited to inspect his body after death by the express desire of the Earl of Northampton.

The Examination of Robert Bright, Gent., one of the Coroners of the County of Middlesex, taken this 1st of October, Anno Reg. Jac. 13.

He said that Mr Lieutenant of the Tower sent for this examinant on the morning that Sir Thomas Overbury died, to take the view of the dead body of Sir Thomas Overbury ; and accordingly he came to the Tower, and thereupon, by the direction of Mr Lieu^t, whom this examinant saw, he made a warrant to the under-bailiff of the Tower to summon a jury, who accordingly did of six warders and six others ; and thereupon this examinant and the jury took a view of the body, and found the body so bare as in effect it was consumed away, having nothing but skin and bones, and the body very lank. And said that he found a black ulcer of the breadth of two fingers, and all

black round about it, betwixt the two shoulder blades; and in the brawn of the left arm he had an issue kept open with a little bullet of gold, and had a plaster on the sole of one of his feet, and on the belly of him two or three blisters of the bigness of a pease, as yellow as amber. And said that he took the verdict of the inquest in the afternoon; but said that he returned not the verdict unto the King's Bench as he ought to have, and the cause thereof was (as he said) for that the City of London, who claim to be coroner there, should have no action against him.

Being demanded whether he had any fee or reward for doing his office, denied that he had any to this day, and denied also, that he had been solicited or conferred withall by any person about this matter.*

Declaration of Helwysse.

I have often since prayed to God to open what else I might heretofore know, and now might forget. This one thing concerning my Lord of Northampton God hath put into my remembrance, that after Overbury was dead, he wrote unto me, that I should *send for Lydcott* to see his body if he would, and that done I should have a priest ready (for that was his word) and presently bury the body, charging me to do this as I respected my friends; which upon the light that your Lord^p had given of his privity, now it may be suspected he might be acquainted with the practice. Some words he had, calling them the damned crew who would be ready to speak the worst. As for myself, which gladly I would find out; or for any other more than I have already written, the Lord he knoweth I cannot say nor call to mind more. This I wrote, and I thank God came into my mind even before I was to receive the sacrament, either to my comfort or utter discomfort. The letter I have not.

GEO. HELWYESS.†

* State Paper Office ; Domestic Papers, 1615, Oct. 1, No. 159.

† Ibid. Nov. 18, No. 301. The original in the State Paper

Lord Northampton to the Lieutenant of the Tower, Sir G. Helwiss.

NOBLE LIEUTENANT,

If the knave's body be foul, bury it presently; I'll stand between you and harm: but if it will abide the view, *send for Lidcott*, and let him see it to satisfy the damned crew.* When you come to me, bring me this letter again yourself with you, or else burn it.

NORTHAMPTON.†

*The Earl of Northampton to the Lieutenant of the Tower
(not signed).‡*

WORTHY M^r LIEUTENANT,

Let me intreat you to *call Lidcote and three or four friends*, if so many come to view the body, if they have not already done it; and so soon as it is viewed, without staying the coming of a messenger from the Court, in any case see him interred in the body of the chapel within the Tower instantly.

If they have viewed, then bury it by and by; for it is time, considering the humors of that damned crew, that only desire means to move pity and raise scandals. Let

Office is written entirely in Sir G. Helwysse's handwriting. The spelling of the signature will be remarked.

* This phrase, "the damned crew," occurs at this period on other occasions where these parties are not concerned. Thus, in the trials for the Powder Plot, Sir E. Coke says, "Observe the sending of Baynam, one of the 'damned crew,' to the high priest of Rome."

† Brit. Mus., Cotton MSS., Titus C. vii., fol. 107, back. This letter is not transcribed in Winwood's "Memorials."

‡ Winwood's "Memorials," vol. iii., p. 48, from Cotton MSS., Titus B. vii., fol. 464, &c.

no man's instance cause you to make stay in any case, and bring me these letters when I next see you.

Fail not a jot herein, as you love y^r friends; nor after Lidcote and his friends have viewed stay one minute, but let the priest be ready, and if Lidcote be not there, send for him speedily, pretending that the body will not tarry.

Y^s ever.

In post haste at 12.

*The Earl of Northampton to the Lieutenant of the Tower.**

WORTHY M^r LIEUTENANT,

My Lord of Rochester desiring to do the last honor to his dec^d friend, requires me to desire you to deliver the body of Sir T. Overbury *to any friend of his* that desires it, to do him honor at his funeral. Herein my Lord declares the constancy of his affection to the dead, and the meaning that he had in my knowledge to have given his strongest straine at this time of the King's being at Tibbalds, for his delivery. I fear no impediment to this honorable desire of my Lord's but the unsweetness of the body, because it was reputed that he had some issues, and, in that case, the keeping of him above must need give more offence than it can do honor. My fear is also that the body is already buried upon that cause whereof I write; which being so, it is too late to set out solemnity.

This with my kindest commendations I ende, and reste
Your affectionate and assured friend,

H. NORTHAMPTON.

P.S.—You see my Lord's¹ earnest desire, with my concurring care, that all respect be had to him that may be for the credit of his memory. But yet I wish withal, that you do very discreetly inform yourself whether this grace

* Winwood's "Memorials," vol. iii., p. 480.

hath been afforded formerly to close prisoners, or whether you may grant my request in this case, who speak out of the sense of my Lord's affection, though I be a Counsellor, without offence or prejudice. For I would be loath to draw either you or myself into censure now I have well thought of the matter, though it be a work of charity.

Upon the back of this letter are the following words in Sir George Helwysse's handwriting:—

So soon as Sir T. Overbury was departed, I writ unto my Lord of Northampton, and because my experience could not direct me, I desired to know what I should do with the body, acquainting his Lordship with his issues, as Weston has informed me, and other foulness of his body, which then was accounted the pox. *My Lord writ unto me, that I should first have his body viewed by a jury; and I well remember his Lordship advised me to send for Sir T. Lidcote to see the body, and suffer as many else of his friends to see it as would, and presently to bury it in the body of the quire, for the body could not keep. Notwithstanding Sir T. Overbury dying about five o'clock in the morning, I kept his body unburied until 3 or 4 of the clock in the afternoon. The next day Sir T. Lidcote came thither; I could not get him to bestow a coffin nor a winding-sheet upon him. The coffin I bestowed; but who did wind him I know not; for indeed the body was very noisome, so that, notwithstanding my Lord's direction by reason of the danger of keeping the body, I kept it over long, as we all felt.*

GEO. HELWYSSE.*

* It is curious that in the letter of Waad, the predecessor of Helwysse, in which he communicates to Lord Salisbury the death of Tresham, the conspirator in the Gunpowder Plot, although it was written on the same morning that Tresham died, and in the month of December, it is stated that the body could not be kept because "it smelt exceedingly," and a speedy burial is suggested for that reason, and also because Tresham's friends were likely to

Thirdly. Scraps from Weston's examinations were made use of at all the trials: If the entire examinations had been read, there were several parts of them tending to show that Sir T. Overbury had, in fact, not been poisoned, at least by Weston; besides much that would have destroyed the credit of Weston's imputations, in consequence of the prevarications and contradictions of his own testimony.

The great particularity of Weston's numerous examinations, and the unreserved manner in which he inculpates the Countess of Somerset, but says nothing of having had any kind of intercourse with the Earl of Somerset subsequently to Overbury's imprisonment, goes far to negative the speeches attributed to him by Simcock regarding the Earl having bribed him, and having communicated to him his fears of Overbury, which were relied upon by Sir F. Bacon as some of the strongest proofs of the Earl's guilt.

It will be further observed, that, in an examination taken on the 6th of October, 1615, Weston negatives Davis's evidence concerning a paper containing white arsenic sent in a letter by the Earl of Somerset to Sir T. Overbury. This, it will be recollected, was the act of direct procurement by the Earl of Somerset, on which very great stress was laid at his trial. The proof of it was rested, how-

beg his body. (Jardine's "Criminal Trials," vol. ii. p. 101.) It is common with Catholic writers to ascribe the death of Tresham to violence or poison.

ever, solely upon the testimony of Davis, backed by the hearsay of Franklin. As parts of Weston's examinations were strongly pressed against the Earl, it would have been fair to have produced that part of them also which, it will be seen, gave a flat contradiction to Davis upon this most important point of the trial.

In the State Paper Office are found examinations of Weston, bearing date in the year 1615, on the 27th and 28th of September, and the 1st, 2nd, 3rd, 5th, and 6th of October. It will be noticed that in the examinations of the 1st and 6th of October the evidence is very strong to fix Lobell with administering the clyster alleged to have been fatal.

The Examination of Richard Weston, taken the 27th of September, 1615.

He said and acknowledged, that he, being the keeper of Sir Thomas Overbury, lately deceased, prisoner in the Tower, *doth know no other cause of the suddainnes of his death but the weakness and corrupt indisposition of his body.*

He confessed that by means of a potion which Sir Thomas Overbury took, he had threescore stools and vomits.

And afterwards going into the Council Chamber in the Tower to see a friend that was in Sir Walter Raleigh's garden, *he sat so long in a window that he was never well after.*

Upon the reading of this confession unto the said Richard Weston, he said, that although Sir Thomas Overbury did tell him that he had 60 stools and vomits, yet he is not certainly assured of that number.*

* State Paper Office ; Domestic Papers, 1615, Sept. 27, No. 145.

The Examination of Richard Weston, taken at the Duchy House, the 28th of September, 1615.

This examinant being demanded whether he had speech with the Lieut^t of the Tower, whereby he signified to the Lieut^t that he, this examinant, had a purpose to poison Sir Thomas Overbury, *first he utterly denied it*, but afterwards he said, that meeting with Mr. Lieut^t upon a time, he, this examinant, showed the Lieut^t a glass with a water in it, which he, this examinant, did not like; whereupon the Lieut^t asked him, this examinant, what a wretch was he that had to do with such a thing; and thereupon he, this examinant, threw the glass and water away.

Being demanded who gave him that glass and the water, first he denied that he knew who gave it him, but afterwards *he said he had it of one Frankelyn*, dwelling, as he said, on the backside of the Exchange.*

The Examination of Richard Weston, taken this first day of October, Anno Reg. Jacobi 13°.

He answered, that after he had obtained a place in the Tower and the keeping of Sir Thomas Overbury, he having served Mrs. Turner, and Mrs. Turner often coming to the Lady of Essex, but not attending on her at that time, Mrs. Turner appointed this examinant to come to the Whitehall to the Countess of Essex, which this examinant did accordingly; and there the said Countess, in the presence of Mrs. Turner, required this examinant to give to the said Sir Thomas Overbury a water which should be sent unto him, but forbad this examinant to drink thereof himself, saying it would do Overbury no harm; yet this examinant perceived, or at least suspected, it should be poison. And

* Staté Paper Office'; Domestic Papers, 1615, Sept. 28, No. 151.

the Countess said further, that if he would do it he should be well rewarded.

And soon after this examinant, having a son named William, who at that time was apprentice to an haberdasher, who served the Countess with fanns of feathers and other wares, his said son brought this examinant from the said Countess a little glass full of water, of a yellowish and greenish colour, which when this examinant had received he presently acquainted Mr. Lieut^t with all, and that it was poison, who very Christianly rebuked him, and so terrified him with God's judgment as this examinant thanked God on his knees that he had acquainted him with it; and yet this examinant carryed away the glass with water with him, and set it in a study or inward room belonging to his chamber.

And the next day this examinant, in the presence of Mr. Lieutenant, cast it into a gutter and brake it. But he further protested that his said son was no way privie or suspecting that it was poison, who dwelleth without Temple-bar, at the Beaver Hat.

He further confessed that he told Mrs. Turner that he had given the water to him, and that it had made him very sick, and to vomit, and cast extremely, which was a sevenight or fortnight after.

And about a fortnight or three weeks after he had received the glass with the poison, Franklyne, a physician, who was well acquainted with Mrs. Turner, came to the tavern of the White Lion, on the Tower Hill, and sent one of the servants of that tavern for this examinant to the Tower, who asked the examinant how he doth that you keep? And this examinant said, "Not very well, for he takes much phisick and many clysters;" and thereupon Franklyn said that apothecary should have 20 pounds to give him a clyster. "What!" said this examinant, "the apothecary that use to give him clysters?" "No," said he, "another shall give it him;" whereof he presently acquainted Mr. Lieutenant of the Tower, who charged this

examinant that *none should come thither but the former apothecary or his man, and said that no other came at any time, or gave any chyster to Sir Thomas Overbury.*

He said, that Sir Thomas Overbury had a most disabled and unhealthful body, and had an issue in his left arm, and plaisters on above the temples, on the left side of his head, and on his back, and the sole of his left foot.

Which plasters for the sores his own servant Davyes brought unto him, and said that he had all the sores and plasters about him before he came into the Tower, saving that on his back.

He confessed that he died on a Wednesday morning, and that he came to him in the night before, for that he heard him groan exceedingly, and said that he removed him from his bed to another bed, which he in the night brought into his chamber, and that he was sent by him on an errand for to fetch some drink ; and he being gone from him not above a quarter of an hour to my Lord Grey's for beer, at his return he found him dead, which was about seven of the clock in the morning ; and now confessed that *Franklyn did not bring unto him the glass with the poison, but that his own son brought it to him, and that ever since he charged Franklyn therewith, it had laid heavy on his conscience.**

The Examination of Richard Weston, taken the 2nd day of October, 1615.

And now he confessed that the Countess, by one of her servants, whose name he knows not, sent a little pot of white jelly to this examinant, knowing what to do with it ; but this examinant, fearing it was poison, *cast it into a homely place, and never delivered it to Sir Thomas Overbury, as was intended, and the like he said for the tarts that were sent.*

* State Paper Office ; Domestic Papers, 1615, October 1 and 2, No. 160.

The Re-examination of Richd. Weston, taken the 2nd of October, 1615.

Now he confessed, that whereas in his former examination he said that he received forty pounds for his reward, that the truth is, he received hundred pounds from the Countess by the hands of M^{rs} Turner.

And said, that the apothecary's partner or servant that always ministred to Sir Thomas dwelleth in Lime-street, and married the sister of the King's apothecary, and is a Frenchman, but his name he remembered not.

He said, that Sir Thomas Overbury was sick about a month before he died, and decayed much in that sickness, and remembered not whether he was sworn to the coroner's inquest or no; but remembered he was there asked how long he was sick, and this examinant told them, as he remembered, a month.

And said, that the night before Sir Thomas Overbury died, Lawrence, now butler to M^r Lieutenant, lay with him.*

Examination of R. Weston, taken this 6th October, 1615.

He confessed, that he received letters from Davyes, Overbury's servant, from my Lord Rochester, to be delivered to Overbury, which this examinant received, and after he had showed them to M^r Lieut^{nt} he delivered them to Overbury.

He denied, that in any of those letters was any paper with any white powder in them, or that he, after Overbury's death, re-delivered to my Lord of Rochester the residue of the powder that remained.

And confessed, that Sir Thomas Overbury, after this examinant became his keeper, (but the certain times he remembers not,) had divers baths given to him, and said,

* State Paper Office ; Domestic Papers, 1615, Oct. 2, No. 162.

*that a little before his death, and, as he taketh it, two or three days, Overbury received a clyster given him by Pawle de Lobel.**

The contradictions between Weston and Davis will appear much more striking on comparison between Weston's unpublished examination of the 6th of October, and Davis's unpublished examination subjoined, than by referring only to the examinations read at the trial.

Lawrence Davis, in the following unpublished examination, represents that not only did Somerset trust him (who was Overbury's servant) with the delivery of poison to Weston, but that it was so carelessly inclosed in the letter as to fall out of it before he delivered it; and that he saw some of the powder in Weston's hands after Sir T. Overbury's decease. At the trial Davis related the purport of the letter of the Earl of Somerset which he said contained the white powder. It is remarkable, that the tenor of this letter, as related by Davis, exactly corresponds with that of a letter spoken of by Rawlins in a MS. examination about to be cited, and which he said contained a wholesome powder furnished by Sir R. Killigrew, that had never been in the Earl of Somerset's possession. Rawlyn's examination, as stated below, is indorsed in Sir E. Coke's handwriting; parts of it were read at the Earl of Somerset's trial; but the part in which he says that he himself wrote in a letter containing a wholesome vomit

* State Paper Office; Domestic Papers, 1615, Oct. 6, No. 179.

furnished by Sir R. Killigrew to the precise effect with what Davis swore was expressed in the letter attributed by him to Somerset, which he said contained arsenic, was, for obvious reasons, suppressed.

The Testimony of Lawrence Davies, this 7th of October, 1615 [upon his Oath].

And further said, that the Lord of Rochester wrote divers letters to Sir Thomas Overbury during his imprisonment, and as he delivered one of them to Weston, his keeper (for this examinant was not permitted to see his master; no, not in the presence of his keeper), one little paper of white powder fell out of the letter, which was put in again, and delivered to Weston to deliver to his master. And Weston not being able to read, did many times request this examinant to read them. And this examinant said, that the Lord of Rochester signified to his master that *the powder would make him sick, but that should be a cause for him to move the King the rather for his liberty*, the time he certainly knows not; and after his master's decease, he saw in Weston's hands part of the white powder, which Weston said he would deliver back again to the Lord of Rochester.*

The Examination of Rawlyns.

About ten days after Sir Tho^s Overbury was committed to the Tower, my Lord commanded me to use his name to Sir Rob^t Killigrew for one of his vomits, but willed me neither to let him nor any other know what use his Lord^p had appointed me to make of it, which was, that I should send it enclosed in a letter from myself to Sir Tho^s Overbury; the substance whereof was, that my Lord would

* State Paper Office; Domestic Corr., 1615, Oct. 7, No. 184.

have him use some means to make himself sick, that he might have a ground to work upon for the speedier obtaining of his liberty, and that I had received the vomit from Sir Robert Killigrew's own hands; according to these instructions I wrote, and sent in the vomit enclosed in the letter by Weston.

[Indorsed in Lord Coke's handwriting] Rawlyns, a vomit, and sent by the Earl, and of Lawrence.*

Concerning the Lawrence Davies, the witness on whose testimony the proof of the Earl of Somerset having sent a powder of white arsenic to be administered to Overbury entirely depends, there is a mysterious notice in a letter now published, which was written to Overbury whilst in prison, by Sir J. Lydcote, his brother-in-law.

SIR,—For me to acquaint Sir Robert Killigrew with this business were preposterous; for I know no man my Lord more mislikes, and that it should be concealed from him he desires nothing more. Wherefore for him to speak in it would but more enrage him, and do you no good, but harm. One told me this day from Sir Humphrey Maye his mouth, that my Lord Cham: is not so foolish to think that you will deny to yield to anything for your liberty; but when all is done, it will be pretended that the King's wrath will keep you there; and, in the meantime, you are cautioned on all hands to avoid that which I fear most of anything in the world. I pray consent to me in this one thing, that Lawrence may be sent out of the way, *for nothing can hurt us, but must be urged from him; which, to prevent, he may send you up word by Weston, that he finds your impatience so great, as all his pains cannot*

* State Paper Office; Domestic Papers, 1615, Oct. 4, No. 170.

satisfy, and that he is not able to endure the toil you put him to, whereat you may seem so offended as you may put it to his choice, and I will send him where he shall be safe (under another name) from all suspicions. By this means shall we be free from their last trick; and whilst you are there, Harry may do you any service you stand in need of. I pray consider well of this, for I think it very material. Study by all means your getting out speedily, for, by God, never any man was so cautioned as you are; but yet I would advise you not to see it, nor take notice of it, but to change your style if you write to my Lord of Roch:, and caution him another while, for there is no honest quarter to be held with him. As you love me burn this, and forbear writing all you can, for it was never so dangerous.

Let this course for Laurence be suddenly resolved upon, which must proceed out of some angry message from you.*

[Indorsed] Sir John Litcott's letter.

Upon Weston's trial, a short extract of a letter from the Lieutenant of the Tower to the King was read, as containing the information that led to the instituting judicial proceedings. The whole letter is here given, from a copy in the State Paper Office. If the whole letter had been read at the trial, it would have tended to negative the two acts of poisoning, by means of rosalgar and the tarts, which, with the clyster and the arsenic, it will be recollected, were the only poisons of the administering of which any kind of proof was given, or which are mentioned in any of the indictments.

* State Paper Office; Domestic Papers, 1615, Aug. 22, No. 115^a.

MAY IT PLEASE YOUR MAJESTY,

I received a command from your Maj^{ty}, by the mouth of Mr. Secretary, that I should freely set down in writing what I did know concerning the death of Sir Thomas Overbury. I humbly beseech your Maj^{ty} to believe, I fear the face of no man in respect of doing what your Maj^{ty} commanded me; but adding unto your Maj^{ty}'s command the discharge of my own conscience, and the clearing of my own poor credit in the world, I do more willingly undergo your Maj^{ty}'s pleasure.

When it pleased your Maj^{ty} to make me your own choice for this place, I found Sir Thomas Overbury a prisoner here. I put a keeper called Weston over him, preferred unto me by Sir Thomas Mounson, (as he and divers others,) and with request that he might be a keeper unto Overbury.

Not many nights after I had placed him there, Weston did meet me, (the place I am well advised of,) and being ready to carry up his soup, asked me whether he should now give him that which he had or no.

I presently did withdraw him, not taking any amazement, nor pretending ignorance; but until I had discovered that which I desired, did run the same course with him. When I had obtained that which I desired, I did begin to terrify him with God's eternal judgment, and did so strike him, as with his hands holden up, he blessed the time that ever he did know me, with other words to that effect over long to trouble your Maj^{ty} with.

"Why sir," (said the fellow,) "did you not know what should be done?" I protested my ignorance therein unto him. I would be glad to protest the like in the face of the world.

By these mean I did get the fellow assured unto me, and understood from time to time whatsoever within his knowledge could be practised against him.

This thing supposed to be given, there was now no more but to hear of the effect. He told them who set him on

work, that he had extreme oustings and other tokens, and I intimated as much unto Sir Thomas Mounson, (who, in this business, in my conscience, is as clear as my own soul,) but *supposing he might let fall some such word to make the fellow better believed.*

This first attempt *taking no success*, there was advantage taken of my Lord of Somerset's tenderness towards Sir Thomas Overbury, who sent him tarts and potts of jelly. These were counterfeited, and other sent to be presented in their stead, *but they were ever prevented; sometimes making his keeper say, my children had desired them; sometimes I made my own cook prepare the like, and in the end, to prevent the pain of continual shifts, his keeper willed the messenger to save labour, seeing he had in the house which pleased him well.*

Then bygone your Maj^{ty's} progress, by which all such cullerable working was taken away; so as there was no advantage but upon the indisposition of Overbury's body. Here (as God in heaven can witness) I was secure. His physician, Mons^r Mayerne, (who left behind him his directions,) his apothecary, (at the physician's appointment,) an approved honest man as I thought it, and still do.

But (as Weston hath since confessed unto me) here was his overthrow, and that which wrought it was (as he said) a clyster. This apothecary had a servant, who was corrupted. Twenty pounds, Weston said, was given.

Who gave it, who corrupted the servant, who told Weston of these things, or *what is become of the servant*, I can give your Maj^{ty} no account; neither can I directly say, that he ever named any as an actor in this business but only Mrs. Turner. If any other were consenting, they two must put the business to a point.

The effect of that which passed between me and Weston the 25th of July last.

It should seem there was lately some whisperings, that Sir Thomas Overbury's death would be called in question,

which came to the ears of some whose conscience must accuse them. Presently a messenger, (being a man of Mr. Turner,) as Weston said, was sent to Weston, with all speed to meet his mistress at Ware, but, coming thither, found her not. The next day she came as far as Hogston, where, at a tavern, (to use his own words,) they met. There they agreed that if he were examined, he should truly confess who recommended him to me; because in the beginning it was otherwise agreed.

Weston and his mistress were, by appointment, then to meet again at London the 24th July, whither Mrs. Turner came from Grays.

He said he was sent to sound me, whether he could perceive that I had got any inkling of their foresaid foul fact, or no; and if he had, whether he could perceive any desire in me to have it reaved into or not, and what more he could discover in me, for he said they stood doubtful of me. His mistress staid but until his return from me.

I have herein obeyed your Maj^{ty}'s command, and have eased myself of a heavy burthen; for malice have I none, nor other respect in the world. I have set down the truth, peradventure not the whole truth; but I have set down whatsoever is fundamental, and will be ready faithfully to answer whatsoever shall be demanded me.

Your Maj^{ty}'s faithful and humble servant,

GERVASE HELWYS.*

The 10th of September, 1615.

There are two MS. examinations of Mrs. Turner. On the last occasion that she was examined, she was confronted with Franklin and with Weston; but she positively denied every imputa-

* State Paper Office; Domestic Papers, 1615, Sept. 10, No. 132.

tion. There is also in the State Paper Office a declaration made by the Alderman in whose house Mrs. Turner was confined previous to being sent to the Tower. He states, that whilst she was in his house, the Earl of Somerset sent her a message, that he would go to Court, and in two or three days would procure her liberty; and, further, that the Earl's messenger offered the Alderman's wife a piece of plate in acknowledgment of her kind usage of Mrs. Turner. He adds that the same messenger afterwards brought to Mrs. Turner, as a present from the Countess of Somerset, a diamond ring, and a jewel of a cross of diamonds. Mrs. Turner's petition to Sir E. Coke for a speedy trial, or to be liberated upon giving bail, may be thought a curiosity.

To the R^t Hon^{ble} Sir EDWARD COOKE, Knt., Lo. Chief Justice of England, and one of His Maj^{ty's} most Hon^{ble} Privy Council.

The humble Petition of ANNE TURNER, widow,
Humbly sheweth,

That whereas it hath pleased your Lordship, upon the malicious and scandalous accusations of your petitioner's suborned adversaries, for these twelve or thirteen days, to restrain her of her liberty, and to keep her close from the access of any of her friends unto her, or of any servant of her's to attend her, which had heaped much sorrow and affliction upon her distressed mind, and sickness upon her weak and feeble body, so as she is thereby brought to great weakness and extremity, besides her hindrance and distraction from business of greatest importance w^{ch} at this time lay upon her.

And that your Petitioner had been by your Lord^p 3 or 4 times strictly examined of matters whereof your Petitioner hopes your Lord^p is fully satisfied that she is most clear and innocent.

Your Petitioner humbly prays, that, in tender consideration of the premises, as also in regard of many poor fatherless children, which in the time of your Petition^r's close restraint endure much grief and distress for lack of such comfort as by your Petitioner's liberty they are wont to receive, your Lord^p would be pleased to do her that justice, which she hopes cannot be denied to the meanest of His Maj^{ty}'s subjects, that if in your Lord^p's judgement she be found guilty of that whereof she has been most falsely and injuriously accused, she may come to her speedy* and ordinary trial in due course of law; if otherwise, that she may no longer be suffered to languish in that miserable sickness and heavyness which she now endures, only to give content to her malicious adversaries; but that upon putting in sufficient bail to be at all times ready to appear before your Lord^p whensoever she shall be called for, she may be enlarged.

And your Petitioner and her poor children shall be bound daily to pray for your Lord^p, &c.†

When inquiring into the truth of the charges concerning the murder of Sir T. Overbury, it would be unreasonable to reject altogether from consideration what convicted prisoners are related to have said after their trials, whether in prison, or upon the scaffold immediately before they were executed.

* These words, "speedy trial," are at this place found in the margin of the petition in Sir E. Coke's handwriting.

† State Paper Office; Domestic Papers, 1615, [October,] No. 190. This is the original petition.

Nevertheless, testimony of this nature requires to be examined with very great caution.*

In the first place, it may be observed, that a degree of suspicion attaches to the genuineness of such relations in ancient times. What transpired in the dungeons of the Tower could be known only to a very few individuals, and those would seldom be impartially inclined or consider their tongues free. What was said at the place of execution might be audible to few or more according to circumstances: But it would be difficult to refute assertions regarding what criminals at the gallows may have said to a Priest or Sheriff, or the still more necessary public functionary standing close to them.

In days before liberty of speech and of the press had been vindicated and established by means of severe national struggles, it was dangerous to attempt to question a criminal upon the scaffold, or to report his dying speech, except according to the directions of the high authorities. Sir J. Wentworth and Sir J. Holles were fined in the Star Chamber for interrogating Weston at his execution. And, according to the subjoined papers, even Sir J. Lydcote, Overbury's brother-in-law, narrowly escaped punishment for the like inquisitiveness. In the

* See the judicious remarks of Mr. Fox, in his history, on the weight to be attributed to Rumbold's dying declaration concerning the Rye-House Plot. Hume attributes weight to the dying declarations of the persons executed for the Popish Plot.

reign of Charles II., a bookseller, a bookbinder, and a printer were fined and pilloried for publishing the dying speeches of the Regicides ; and they were informed by Ch. J. Hyde, that they were dealt with very leniently, not to have been prosecuted capitally for high treason.

It has been observed that the dying declarations of persons who are not implicated in any crime are equivalent, in point of credibility, to testimony upon oath. Such evidence, however, wants those important safeguards of truth, the test of cross-examination, the delivery of testimony in a public court of justice, and in the presence of the persons whom it may affect. The tendency of modern decisions is to exclude dying declarations from being received in evidence in civil cases ; and, in criminal cases, to restrict their admissibility to occasions where the death of the person who made the declaration is the subject of the trial, and where the circumstances of the death are the subject of the declaration.*

The cases may be rare in which dying criminals disbelieve in the existence of a God ; but it is very common indeed to meet with persons who have so little cultivated the powers of their minds as to be incapable of withdrawing their attention with any steadiness from the visible objects of their percep-

* See Phillips and Amos on Evidence, " Dying Declarations." In Drummond's Case, (1 Leach, Cr. C. 337,) the dying declaration of an attainted convict was rejected, on the ground that his oath could not have been received.

tions around them. Even on the verge of the grave, love and friendship, or the impetuous passions of hatred or revenge, are often more powerful in their influence than the desire of truth or the future terrors of Divine wrath. Although the criminal has only a few moments remaining to him for forming or gratifying any wishes of this world, yet even during that brief space of time the good opinion of bystanders, or, at least, their sympathy, is far from being an object of indifference to the human heart.

“ Even from the tomb the voice of nature cries,
Even in our ashes live their wonted fires.”

Nor is it to be considered that to all minds the approach of death by a public execution is accompanied with the same terrors with which, from our own ways of thinking, we may habitually associate it. Montagne, when inquiring into the causes why death appears more terrible to the better sort of people than to the meaner, after describing its usual concomitants to persons in affluent circumstances, observes, “ If the image of death were to appear thus dreadful to an army, they would be an army of whining milksops ; and where is the difference, but in the apparatus ? Thus in the field (I may add, at the gallows) what is encountered with gaiety and unconcern, in a sick-bed becomes the most dreadful of all objects.”

There is one feeling, at least, which rarely deserts the human heart, so long as it continues to vibrate, and that is the hope of life. A wretch with his

foot on the ladder of the gallows will not abandon this hope, if he imagine that either a public declaration of innocence, or even a simulated contrition for crimes which he has not committed, still more the false accusation of another, may avert or postpone his fate.

Fielding, in treating on the effect of public executions, whilst it was the custom, as at the time when Franklin and Weston were executed, for criminals to be carried in procession, such as Hogarth has depicted, to Tyburn, writes, in his tract on the "Causes of the Increase of Robbers,"

But if every hope which I have mentioned fails the thief,—if he should be discovered, apprehended, prosecuted, convicted, and refused a pardon,—what is his situation then? surely most gloomy and dreadful, without any hope, and without any comfort. This is, perhaps, the case with the less practised, less spirited, and less dangerous rogues; but with those of a different constitution it is far otherwise. No hero sees death as the alternative which may attend his undertaking with less terror, nor meets it in the field with more imaginary glory. Pride, which is commonly the uppermost passion in both, is in both treated with equal satisfaction. The day appointed by law for the thief's shame is the day of glory in his own opinion. His procession to Tyburn, and his last moments there, are all triumphant; attended with the compassion of the meek and tender-hearted, and with the applause, admiration, and envy of all the bold and hardened. His behaviour in his present condition, not the crimes, how atrocious soever, which brought him to it, are the subject of contemplation. And if he hath sense enough to temper his boldness with

any degree of decency, his death is spoken of by many with honour, by most with pity, and by all with approbation.

Fielding's description of the last moments of Jonathan Wild was not, we may presume, at the time he wrote, wanting in verisimilitude to the occurrences of life and death at the Old Bailey.

At length the morning came, which Fortune at his birth had resolutely ordained for the consummation of our hero's greatness: he had himself indeed modestly declined the public honours she intended him, and had taken a quantity of laudanum, in order to retire quietly off the stage; but we have already observed, in the course of our wonderful history, that to struggle against this lady's decrees is vain and impotent; and whether she hath determined you shall be hanged or be a prime minister, it is in either case lost labour to resist. Laudanum, therefore, being unable to stop the breath of our hero, which the fruit of hemp-seed, and not the spirit of poppy-seed, was to overcome, he was at the usual hour attended by the proper gentlemen appointed for that purpose, and acquainted that the cart was ready. On this occasion he exerted that greatness of courage, which hath been so much celebrated in other heroes; and knowing it was impossible to resist, he gravely declared he would attend them. He then descended to that room where the fetters of great men are knocked off in a most solemn and ceremonious manner. Then shaking hands with his friends (to wit, those who were conducting him to the tree), and drinking their healths in a bumper of brandy, he ascended the cart, where he was no sooner seated, than he received the acclamations of the multitude, who were highly ravished with his greatness.

The cart now moved slowly on, being preceded by a troop of horse-guards, bearing javelins in their hands, through streets lined with crowds all admiring the great

behaviour of our hero, who rode on sometimes sighing, sometimes swearing, sometimes singing or whistling, as his humour varied.

When he came to the tree of glory, he was welcomed with an universal shout of the people, who were there assembled in prodigious numbers, to behold a sight much more rare in populous cities than one would reasonably imagine it should be, viz., the proper catastrophe of a great man.

But, though envy was, through fear, obliged to join the general voice in applause on this occasion, there were not wanting some who maligned this completion of glory, which was now about to be fulfilled to our hero, and endeavoured to prevent it by knocking him on the head as he stood under the tree, while the ordinary was performing his last office. They therefore began to batter the cart with stones, brickbats, dirt, and all manner of mischievous weapons, some of which erroneously playing on the robes of the ecclesiastic, made him so expeditious in his repetition, that with wonderful alacrity he had ended almost in an instant, and conveyed himself into a place of safety in a hackney coach, where he waited the conclusion with a temper of mind described in these verses :

*“ Suave mari magno, turbantibus æquora ventis,
E terra alterius magnum spectare laborem.”*

We must not, however, omit one circumstance, as it serves to show the most admirable conservation of character in our hero to his last moment, which was, that whilst the ordinary was busy in his ejaculations, Wild, in the midst of the shower of stones, &c., which played upon him, applied his hands to the parson's pocket, and emptied it of his bottle-screw, which he carried out of the world in his hand.

The ordinary being now descended from the cart, Wild had just opportunity to cast his eyes around the crowd,

and to give them a hearty curse, when immediately the horses moved on, and with universal applause our hero swung out of this world.

An analogous picture of a Tyburn hero is represented by Gay, in the character of Captain Macheath, in the "Beggar's Opera."* He is introduced singing the following song, at the moment when, according to the maxim of our forefathers, which was extolled and enforced by the law officers at Sir W. Raleigh's trial, "*nemo præsumitur mentiri.*"

SCENE III.—THE CONDEMNED CELL.

Macheath in a melancholy posture.

MEDLEY.

Oh, cruel, cruel, cruel case !
 Must I suffer this disgrace?
 Of all the friends in time of grief,
 When threat'ning Death looks grimmer,
 Not one so sure can bring relief
 As this best friend, a brimmer. [Drinks.
 Since I must swing—I scorn, I scorn to wince or whine. [Rises.
 But now again my spirits sink,
 I'll raise them high with wine. [Drinks.
 But valour the stronger grows
 The stronger liquor we 're drinking;
 And how can we feel our woes
 When we've lost the trouble of thinking ! [Drinks.

* The songs in the "Beggar's Opera" were written by Gay's friends, the wits of the day. Macheath's dying bravura has been attributed to Swift.

If thus a man can die
Much bolder with brandy,

[Pours out a bumper of brandy.]

So I drink off this bumper—and now I can stand the test,
And my comrades shall see that I die as brave as the best.

[Drinks.]

But can I leave my pretty hussies
Without one tear, or tender sigh?
Their eyes, their lips, their busses
Recal my love—Ah! must I die?
Since laws were made of every degree,
To curb vice in others, as well as in me,
I wonder we ha'n't better company
Upon Tyburn tree.
But gold from law can take out the sting;
And if rich men, like us, were to swing,
'Twould thin the land, such numbers to string
Upon Tyburn tree.

The history of our State Trials exhibits, in a remarkable manner, the deference paid to public opinion, in the pains taken with regard to the publication of the statements of condemned persons, made in prison or upon the scaffold. But the measures adopted for obtaining and promulgating such statements detract very much from the credit challenged, whether for the sincerity of the confessions or the fidelity with which they were communicated to the public. The Earl of Essex was visited on the day after his trial by the Dean of Norwich, who was sent to him by the Lords of the Council: afterwards his own chaplain was desired to go to him, and then two other clergymen. He had also a

meeting in the Tower with the Lord Keeper, Lord Admiral, Lord Treasurer, and Sir R. Cecil. But no friend, not even his wife or mother, were allowed to have any interview with him. It appears, from a letter of Cecil, to be found in Winwood's Memorials, that Essex made a statement, called a confession, which was written on four sheets of paper in his own hand. The contents of this document were never made public. It is shewn, further, by letters sent to the officers of the Tower on the day before Essex was beheaded, that two new Divines were directed to be present at his execution. The Constable and Lieutenant of the Tower, and the Divines, are in one of these letters directed to have "a very great and vigilant care" that Essex should not at his execution "excuse or justify himself," but that he should confine his speech within certain limits that were prescribed.

Bacon's celebrated "Declaration of the Treasons of the late Earl of Essex and his Complices," and a document in the State Paper Office, furnishing topics of invective, and entitled "Directions to the Preachers," indicate that Queen Elizabeth or her ministers were not willing to remain satisfied with the impressions which the public mind might receive from the evidence adduced at the Earl's trial, but that it was deemed politic to publish misrepresentations after the trial, by which to mislead public opinion, and stifle public sympathy for the condemned.

In like manner, after the execution of Campion,

the Jesuit, and his associates, in the reign of Queen Elizabeth, a publication was issued bearing the following title:—"A particular testimony of the undutiful and traitorous affection borne against her Majesty by Edmund Campion, Jesuit, and other condemned Priests, witnessed by their own Confessions, in reproof of those slanderous Books or Libels delivered out to the contrary, by such as are maliciously affected towards her Majesty and the State. Published by authority, and imprinted at London by Christopher Baxter, printer to the Queen's most excellent Majesty, A. D. 1582."

Sir W. Raleigh was attended in prison and on the scaffold by the Dean of Westminster, in pursuance of the commands of the Lords of the Council, by which the Dean was required to make a particular report of every thing that transpired. This Prelate, in a letter to a friend, mentions the name of the person by whom an account of Sir W. Raleigh's last moments had, as it would seem, by order of the Council, out of his own memoranda, been, as he expresses it, "prettily penned." Soon after Raleigh's execution, there was also published, at Lord Bacon's suggestion, a "Declaration of the Demeanour and Carriage of Sir Walter Raleigh, as well in his voyage, as in and since his return." Concerning this declaration, Lord Bacon writes to the Marquis of Buckingham, "We have put the declaration touching Raleigh to the press, with his Majesty's additions, which were very material, and fit to proceed from his Majesty."

Garnet, the Jesuit, was attended on the scaffold by the Deans of Westminster and St. Paul's and the Recorder of London, Sir H. Montague. They pressed him to make declarations on various matters; and in one instance the Recorder repeated what he said or was represented to have said in a louder voice to the people. The Recorder held in his hand several papers which the King had given him; in order that, if Garnet should deny his guilt, confessions under his own hand might be read on the scaffold. He made a show of reading them whenever Garnet appeared to commence any statement of a justificatory nature. A relation of the execution was afterwards published by authority, and circulated with a garbled report of Garnet's trial.

Mr. Brodie, in his "History of the British Empire," has arraigned King Charles I. of a deliberate falsehood uttered on the scaffold. It is true that Charles's expressions in his last moments, with regard to his feelings and conduct towards Parliaments, as well as those of his ministers Laud and Strafford, on the same subject, at their executions, are strikingly at variance with the history of their political measures, the memorials of their public declarations, and the language of their private papers. It is not improbable, however, and it would be uncharitable not to suppose, that these enemies of public liberty may have been blinded by their prejudices and passions from viewing their

past conduct and motives in the same light in which they are regarded by posterity.

Donellan, tried by Judge Buller for poisoning Sir Theodosius Boughton, and against whom the evidence, though presumptive, has generally been considered satisfactory, nevertheless, according to the account published by his solicitors, “uniformly, solemnly, and eagerly protested his innocence to the last.”

One of the most remarkable cases in England of a solemn declaration of innocence on the scaffold is that made by Mary Blandy, who was hanged at Oxford for the murder of her father. In a paper delivered at the place of execution, and also in an address pronounced in a clear and audible voice to the bystanders round the scaffold, she protested, saying, “I am perfectly innocent as to any intention to destroy, or even hurt my *dear* father.” This protestation was accompanied with the following expressions: “So help me God in my last moments! And may I not meet with eternal salvation, nor be acquitted by Almighty God, in whose awful presence I am instantly to appear, if the whole of what I have asserted is not true!” And yet the evidence against Mary Blandy has generally been considered conclusive; and with regard to her affection towards her father, which she would have had inferred from her calling him “*dear father*” in her dying speech, it was proved at the trial, that she said of him, “Who would grudge to send an old father to hell for 10,000*l*.?”

What by the process denominated by Sir E. Coke “pressing the conscience,” and what by fabricating the speeches of condemned persons, an ample harvest of contrition was represented to have been reaped in ancient times, both in the Tower and at Tyburn. It can scarcely be supposed that Essex’s self-abasement was so prostrate as is represented in the following report, of which the original, signed by three clergymen, is preserved in the State Paper Office: it is indorsed in Sir E. Coke’s handwriting with the words “O tempora.”

25th February, 1600.

1.—The late Earl thanked God most heartily that he had given him a deep insight into his sin, being sorry he had so stood upon his justification at his arraignment, for he was since that become another man.

2.—He thanked God that his course was prevented; for if his project had taken effect, “God knows,” said he, “what harm it had wrought in the realm!”

3.—He humbly thanked her Majesty, that he should die in so private manner, lest the acclamation of the people might have been a temptation unto him; to which he added that popularity and trust in man was vain, the experience whereof himself had felt.

4.—He acknowledged with thankfulness to God that he was justly thus *spewed out of the realm*.

5.—He publicly in his prayer and protestation, as also privately, aggravated the detestation of his sin; and especially in the hearing of those that were present at the execution, he exaggerated it with four epithets, desiring God to forgive him his great, his bloody, his crying, and his infectious sin; which word infectious he privately had ex-

plained to us that it was a leprosy which had infected far and near.

THOMAS MONTFORD.

WILLIAM BARLOW.

ABDIE ASHTON.

Guy Fawkes, though his body was so weak from the tortures which had been inflicted on him, that it was necessary he should "be lifted up the ladder with much adoe," is represented to have manifested great sorrow for his offence, and to "have asked forgiveness of the King and the State for his bloody intent." Queen Anna Boleyn is represented to have said, just before placing her head on the block, of Henry VIII., "a more gentle or mild Prince never swayed sceptre; his bounty and clemency towards me, I am sure, hath been special."

The following passage regarding confessions at the gallows occurs in a work of one of our most eminent ancient divines, Baxter's "Certainty of the World of Spirits:"—

The hanging of a great number of witches in Suffolk and Essex, by the discovery of one Hopkins, in 1645 and 1646, is famously known. Mr. Calamy went along with the Judges in the Circuit, to hear their confessions, and see that there was no fraud or wrong done them. I spake with many understanding, pious, and credible persons, that lived in the counties, and some that went to them to the prisons, and heard their sad confessions. Amongst the rest, an old reading parson named Lowis, not far from Framlingham, was one that was hanged; who confessed that he had two imps, that one of them was always putting him on doing mischief, and (he being near the sea) as he saw a ship

under sail, it moved him to send him to sink the ship, and he consented, and saw the ship sink before him. One penitent woman confessed, that her mother lying sick, and she looking to her, somewhat like a mole ran into the bed to her, which she being startled at, her mother bad her not fear it, but gave it her, saying, keep this in a pot by the fire, &c., and thou shalt never want. She did as she was bid. Shortly after a poor boy (seemingly) came in, and ask'd leave to sit and warm him at the fire, and when he was gone, she found money under the stool; and afterwards oft did so again, and at last laid hold of her, and drew blood of her, and she made no other compact with the devil, but that her imps sucked her blood, and, as I heard, she was delivered. Abundance of sad confessions were made by them; by which some testified, that there are certain punishments, which they were to undergo, if they did not some hurt as was appointed them.

One of the witches tried at Essex, Anne Leach, confessed that "she had a grey imp; and that she and two other witches, about a year since, sent their imps to kill a black cow of Mr. Edwards, which was done accordingly. The other witches, viz., Elizabeth Clarke and Mary Gooding, sent, the one a black imp, and the other a white imp. And that when she did not send and employ her imp to do mischief, she had not her health." Another of the same company of witches, Hellen Clark, confessed, that, "about six weeks since, the devil appeared to her in the likeness of a white dog; and that she called that familiar Eleinanzter, and that she hath often fed him with milk and pottage."

One of the Devon witches confessed that "she

could go invisible into any place, and yet her body shall be lying in bed, and that the devil appeared to her in the shape of a lion."

One of the witches of Warbois made a confession, that she had acquaintance with nine spirits, whom she named and described. It was out of the escheats of the property of these Warbois witches, that the lord of the manor of Warbois made an endowment for an annual sermon on witchcraft to be preached by a Fellow of Queen's College, Cambridge.

The reports of the sayings of the culprits convicted of the murder of Sir T. Overbury about to be presented to the reader's attention, rest chiefly on the authority of Sir E. Coke and Dr. Whiting. This Divine was, doubtless, as Sir F. Bacon intimates in one of his letters, a "discreet man," and "well chosen" for the purposes for which he was employed. To him, however, might have been applied the lines which Sir E. Coke pedantically quoted in the Star Chamber against Sir J. Holles, for following Weston to the gallows—

*"Et lupus et vulpes instant morientibus ———,
Et quæcunque minor nobilitate fera est."*

For it is remarkable that this person was always selected to "press the consciences" (as Sir E. Coke termed it) of the prisoners after their convictions; and the following papers will show that the cajoling hypocrite was indefatigable in his vocation.

With regard to Sir E. Coke, he would naturally con-

sider that his high reputation was at stake, according as the dying speeches of the prisoners might appear to confirm the evidence which, as public prosecutor, he had industriously collected, and which, as Judge, he had strenuously pressed on the consciences of successive juries. The Star Chamber proceedings against Sir J. Holles, Sir J. Wentworth, and Mr. Lamsden indicate the sensitiveness of Sir E. Coke as to every matter which might be thought to engender any doubts concerning the justice of the proceedings that led to Weston's conviction. It may also be suspected that Sir E. Coke apprehended that the details of the confessions of convicted malefactors might have considerable influence with the Peers, in facilitating the convictions of the Earl and Countess of Somerset ; as to which it is to be observed, that at the Countess's arraignment Sir E. Coke made the following announcement:—"Whatsoever whisperings there be abroad of the death of Weston, they all (some before the hour of their death) confessed the fact, and died penitent ; and, if need should require, I have brought their *Confessor* along—namely, *Dr. Whyting*."

It will be seen that nearly all the detailed reports of the confessions of the prisoners after their trials, taken from the originals in the State Paper Office, are in the handwriting of Sir E. Coke. The alterations and interlineations in the MSS. are not altogether unimportant. In one place it will be observed that there are directions for an omission of

words between a *strike* ; in another, there is an interlineated passage, according to which Franklin is represented to have said, that *all which is set down in any of his examinations before the Chief Justice, or in any declaration under his hand which the Chief Justice hath, is true, upon his soul.* And in another place Sir E. Coke writes that Franklin said of him, Sir Edward, “ God bless the Chief Justice ! for he is as honourable and worthy Judge as ever sat in that place.”

On the supposition that all the dying speeches and confessions, for which our belief must depend on our opinion of the veracity of Dr. Whyting and Sir E. Coke, are genuine, we shall next have to consider their effect. It will be observed, that, in a conversation between Dr. Whyting and Mrs. Turner, the doctor asks her “ whether Sir T. Mounson’s hand was not in this business ;” to which she answers, “ If you will have me say so, I will.” And there can be little doubt that the prisoners would have eagerly caught at any temptation being held out to them, whereby they might have a prospect of saving their own lives, by inculpating persons the conviction of whom, as they would perceive, was much desired. The casting of accusations would also appear to them a probable means of, at least, delaying their own fate, and of giving them the benefit of various chances of events that might arise. Nor, perhaps, after reading the importunities of Dr. Whyting—his “ dealing effectually with prisoners for the saving

of their souls"—his "ghostly comforts"—his leading questions interposed between prayers and sermons and the Holy Communion—shall we be surprised if prisoners should have endeavoured to escape from his mental tortures, as hath been often done by persons on the rack, by confessing whatever their inquisitor judged it expedient to dictate?

It is remarkable that throughout these confessions made after the trials not one word transpired of anything tending to show the participation of the Earl of Somerset in a plot to murder Overbury; and it is difficult to suppose that the Earl should have been a principal instigator of the murder, and yet that neither Sir G. Helwysse, nor Mrs. Turner in particular, should have been able to state any fact or communication indicating the Earl's privity with their proceedings.

It will probably be thought, after reading Franklin's strange statements and accusations made subsequently to his conviction, that it was a very scandalous proceeding to use his testimony at the Earl of Somerset's trial, without giving the Peers an opportunity of judging, from Franklin's own declarations, what small reliance could be placed on his veracity. Sir F. Bacon takes credit for confining his evidence of the confessions of accomplices to what they stated before their convictions. The fallacy of this mode of proceeding will be exposed in its proper place; but it may be here observed, that if the Peers had been made acquainted with all that Franklin said after as

well as before conviction, it would have benefited and not prejudiced, as Sir F. Bacon insinuates, the Earl of Somerset; for the Peers would, most probably, have repudiated Franklin's testimony altogether. In a cancelled passage of a letter to the King, which will be given in a subsequent chapter, and which was written previously to the Earl of Somerset's trial, Sir E. Coke expresses his opinion how "*foul*" a character Franklin was, though he does not finish the sentence in which the epithet occurs.

It remains only to observe, further, in placing before the reader the following documents, that happily they appear to be the only instances in the records of the country of a Chief Justice penning with sedulity the minute particulars of whatever might have been uttered in conferences between condemned prisoners and their spiritual comforters, from the time of their quitting the bar from which he had dismissed them "to the place from whence they came," up to the moment when they were turned off from the fatal ladder or cart.

The first two papers about to be subjoined relate to a charge against Sir T. Overbury's brother-in-law, Sir John Lidcott, for making inquiries of Weston at his execution. They indicate the sensitiveness of the law officers regarding the credit of Weston's confessions read at his trial, and perhaps evince some doubt of their truth even in the mind of a relative of the deceased, whose feelings may be presumed to have been on the side of the prosecution.

*The Examination of Sir John Lidcott, Knight, taken this
26th of October, 1615.*

He said, that at the execution of Richard Weston there were present together S^r John Hollis, S^r Tho^s Vavasor, S^r John Wentworth, M^r Sackvill, S^r John Ayres, S^r William Mounson, S^r Henry Vane, and others; and many of them spake together, and asked Weston whether he had poisoned S^r Thomas Overbury or not? Whereupon this examinant asked Weston *whether he poisoned Sir Thomas Overbury or no?* who answered that he had left behind his mind with the Lord Chief Justice; and remembered that, upon his question to Weston, S^r John Wentworth said, S^r John, it is nobly said,—ask him again; but this examinant, seeing advantage taken of his words, held his peace.

(Signed) Jo. LYTCOTT.

J. ELLESMERE CANC.

LENOX.

E. ZOUCHE.

EDW. COKE.*

Sir John Lydcott's Petition.

To the Right Hon^{ble} Thomas Lord Ellesmere, Lord Chancellor of England, Lodoricke Duke of Leneux, George Lord Zouche, Lord Warden of the Cinque Ports, and Sir Edward Coke, Knight, Lord Chief Justice of England, all of his Maj^{ties} most hon^{ble} Privy Counsell,

The humble Petition of Sir JOHN LYTCOTT, Knight,

Who humbly desires your Honors, that whereas your petitioner was justly committed by your Lordships for demanding of Richard Weston (when he was to be executed) whether he poisoned S^r Thomas Overbury or not, which

* State Paper Office; Dom. Jac. I., vol. 58, No. 246, in Sir E. Coke's handwriting.

question was not propounded out of any doubt which your petition^r did or could conceive, considering so foul and plain matter manifestly discovered and proved against him at his trial, (where your petitioner was present,) but your petitioner did demand the same question to the end that some of the company that were over inquisitive might receive satisfaction that he was guilty of the offence for which he was then to dye, making no doubt but the said Weston (having confessed so much before against himself) would then have freely acknowledged the same, to which question Weston answered, "*What I know I have left with the Lord Chief Justice,*" by w^{ch} answer your petitioner did perceive his own rash oversight and error, and thereupon did refuse to use any further speech unto him, although he was earnestly incited and requested by some then there present to demand the same question of him again.

Now, forasmuch as your Lordships' humble petitioner doth acknowledge the said great offence and rash presumption, and is heartily sorry for the same, which he hopes your Hon^{rs} will be pleased to conceive to proceed rather out of his sudden unadvisedness than out of any doubt he could conceive of the said Weston's just trial and condemnation, he humbly craves pardon for the same, and further humbly desires your Lord^{pps}' favour for his enlargement, the rather because by the continuance of his imprisonment there will come a perpetual blemish upon his reputation. And for your hon^{ble} favour therein your petitioner shall stand much bound unto your Lordships.*

The following particulars regarding Sir G. Helwysse's demeanour and speeches after his trial, and before he was carried out of prison to be executed, have not before been published. The part of the

* State Paper Office; Dom. Jac. I., vol. 58, No. 247. It is a suspicious circumstance, that no paper is to be found purporting to have been "left with the Chief Justice" by Weston.

document which relates to Sir Gervase's speech from the ladder corresponds in substance with what is found in the State Trials. The narrative in the State Trials appears to have been copied from the book entitled "Truth brought to Light by Time," omitting some circumstances, as, for example, a description of Sir Gervase's dress. It contains some particulars which are not here related; as that Sir Gervase first "went up the ladder four or five steps, but finding it to stand too upright for his ease, spake to have it amended, which forthwith, he coming down, was done: and then he went up again six steps, where, after a while setting easily," he made his last dying speech. The narrative in the State Trials further mentions that Dr. Whyting and Dr. Fenton "strained courtesy which of them should begin a public prayer suitable to this party's condition; one of them willed the other;" but, at last, Dr. Whyting prevailed on Sir G. Helwysse to make the prayer himself. That narrative, however, only notices such conversations and facts contained in the MSS. as occurred after Sir Gervase had been led out of the gates of the Tower.

18 die Novembris, 1615.

Towards the end of the evidence against Sir Gervase Helwysse, at the Guildhall the 16th of this inst. November, when James Franklyne's examination was read, wherein he testified that he saw a letter written from Sir Gervase to the Countess, in which letter Sir Gervase wrote thus: "This scabbe is like the fox, who the more he is cursed, the better he fareth." At the hearing whereof Sir Gervase was amazed, and, striking his hand on his breast, said to

himself, then "Lord have mercy on me." Mr Martyn Bonde, one of the jury, standing next to him saw both the manner of his behaviour, and heard the said words he spoke, and reported it to the rest of the jury.

After he was condemned, Mr Doctor Whighting repairing to him for ghostly comfort, he confessed to him that he wrote such a letter to the Countess, and that it was agreed between the Earl of Northampton, the Countess of Essex, Sir Thomas Mounson, and him, that this word (scabbe) should be the by-word in all their letters and callings to express Sir Thomas Overbury. He also confessed himself guilty in these three respects: first, in distrusting God's providence, in that he knew and concealed the wretched purpose to poison Sir Thomas Overbury, and that any worldly respect of greatness or great men's favour should keep him from the discovery thereof; whereby, and in his default in giving way to it, it had reached so far to the taking of the blood of himself and so many others as be in this case, and for making of so many fatherless and husbandless persons. And therefore he does justly suffer the very same judgment upon his own wife and children, that now are cast into the world. And this was the grief that did lay upon him. Second, in respect of his uncharitableness to Sir Tho^s Overbury, drawing tickets and writings from him according to those lessons and promptings given unto him by the Earl of Northampton and the Countess of Essex, and that he had justly deserved to die even for them. Third, he confessed that many things had slipped his pen suspiciously and unadvisedly, whereof he can make no good account, and that in some of them there was matter sufficient to condemn him; wherefore he did neither condemn Judge nor jury, but acknowledged the sentence was most just upon him.

And being much blamed by Mr Doctor for being so obstinate at the bar, and denying of the truth so obstinately, answered, that he was not sensible of his guiltiness till he

talked with Divines, who caused him to see it. And that he thought that trick might satisfy, that he had no felonious intent of himself to murder him, howsoever he knew that they had resolved it.

And being charged with his desperate conclusion, mentioned in his letter to the Earl of Northampton, and in one of the letters of the Earl to him, said, that he could not answer it. "This was my villany and foulness of my fact, that I, knowing it, suffered any man to practice upon him being under my custody, and not to discover it."

He having warning on Sunday last, about five of the clock in the evening before he suffered, that he should suffer the next morning, the better to prepare himself for death, and not — put upon him, when the messenger of death delivered that message, he being well exhorted by the Divines, desired to be private, and cast himself groveling upon his bed, and there the Divines left him for two hours, and after the Divines repaired to him again and asked him how he did; who answered "As well as a dying man may do. But I will tell you," (said he,) "I have since you went ript up myself from my cradle, and have found myself to be a most horrible, filthy, vile, and beastly sinner, and one that had abused all the gifts and graces that ever God of his mercy had bestowed on me, turning them to wantonness, and the serving of my own concupiscence," and many other matters to that purpose.

And whereas he thought that he had treasured up in his heart knowledge and comfort against the day of visitation, now he found himself destitute, for he did but flatter himself with that which was not in him. But yet the grace of God was in him in radice, although I have not now the lively fruit of it. And then the Divines comforted him.

Amongst other things, he said to the Divines, they pressing his conscience, that when Weston told him that he was to give Sir Thomas Overbury poison, and that Sir Gervase seemed to dissuade him, "Why," (said Weston,)

“ they will have me give it him first or last ;” he said, “ Let it be done so I know not of it.” *

The next morning the Divines, with others by the Divines’ motion, joined in prayer. Then he desired to pray by himself, though (as he said) he did but chatter as a crane, and then prayed very fervently. And between eight and nine of the clock in the morning he was led between the two Divines, viz. Doctor Felton and Dr. Whiting, the two Sheriffs riding before him to the Tower Hill, which rejoiced him much, that he was in such a manner carried to his death, and that he died not at Tyburn. And coming to the ladder, went up some four or five degrees.

And first he heartily repented of those protestations and denials that he made upon his arraignment at the Guildhall, saying that he had lost the love of many of his friends in denying of that fact, for which he was justly condemned, wherein he said his heart was opened upon conference with the Divines, acknowledging that the King and the State had dealt honorably, justly, and round with him, in punishing of him for that bloody murder, which he knew, gave way unto, and might so easily have prevented. And dissuaded the people from treachery and unfaithfulness, and prayed most effectually for the King and the State. He took it for an honor to die in that place where he had sinned, and wherein he had carried himself so treacherously and unfaithfully, and said “ it is no shame for me to die on this tree, seeing I shall presently see my Saviour face to face ; † *and this punishment is a means of my salvation, for if I had before times died when I was sick, or shot the bridge as I have done oft in some danger, I had died in my sins, but God had sent me now true repentance, and by a lively faith in my Saviour I hope to be saved.*”

* Here follow, in the original, some words of a sentence half finished, and which are scored through. They are as follows :—
“ And said further to them, that the —— Lady ——”

† The passage in italics is an interlineation.

And then made a prayer for them (some of whom he said were in the Tower, pointing to it) that were in this bloody fact, and were to follow him; that God would give them grace, high and low, to take that bloody fact to heart, and truly to repent themselves; himself wishing (if he might do it lawfully) to expiate that blood, that he might hang in chains, and rot away by piecemeal, or that, as he said to the Divines in private, as in France, his bones might be broken in pieces upon the wheel, or endure any temporal torments whatsoever. Besides this fact, for which he was justly condemned, he said he had been a great gamester, and spent much time and money, and always ill luck followed him. And at one time after play, he did advisedly say in this manner: "O God, if ever I play again, let me be hanged;" and yet many times after he played. And dehorted the hearers from play, and especially from imprecations against themselves.* *He also said that his father charged him on his blessing, that he should not follow the Court nor live about London, which he promised to perform; but when he was to have the Lieutenant's place, though he remembered his father's charge and his promise, and which made him somewhat pause, and yet ambition and worldly vain deceit made him neglect his father's charge, and break his own promise to his father, wherein now in this bloody fact he findeth he greatly offended Almighty God and his own conscience; and exhorted all men to take heed by his example here in the like case.*

To whom Sir Maximilian Dalyson openly said, "You have stroken my heart, and I hope many others with me, and I trust this shall do me good as long as I live, for we have spent many hours in play together." To whom Sir Gervaise said, "O Sir Maximilian, it is true we have lost as much at one rest as would have relieved many poor, that

* The passage in italics is an interlineation. The interlined part is, in some places, written on erasures.

might have prayed for us." And proceeding effectually in admonishing the people to a godly and virtuous life, said "How happy a man were I if I could convert but one soul by my woeful example this day; that soul might happily beget another, and that other yet another, &c., and so many." He then utterly renounced all annabaptistical and dissendants' opinions.

He confessed also that before the bloody fact he was treacherous and false to Sir Thomas Overbury, for drawing of matters from him against himself, upon such tickets and instructions as he received from the Earl of Northampton and Sir Thomas Mounson, the more to exasperate them against him. (He also said that this matter had had a beginning, but God knows when it should end.) "As for any point of innocency I utterly cast it away, being imbued in this bloody fact." And he said "I have taken (and so many of you know it) a vain pride in my penn, and therefore this judgement is just upon me, for that I have in my letters that were read against me let drop a word or two out of my penn which touched my life, being (upon my salvation) not able to answer it."

And after many devout and fervent prayers he yielded up his soul to Almighty God, chearfully, penitently, and faithfully.*

The narrative of Mrs. Turner's conduct after her execution, which is found in the State Trials, is confined to a few particulars concerning what passed at Tyburn. It is related that many ladies and gentlemen of fashion came in their coaches to see her hanged, and that the spectators evinced great commiseration for her. The following papers,

* State Paper Office; Domestic Papers, 1615, Nov. 18, No. 305. This draft is in Sir E. Coke's handwriting.

in Sir E. Coke's handwriting, evince his anxiety in *settling*, as a lawyer would express it, Dr. Whyting's memoranda of conversations, in a manner the better to justify the proceedings against her, of which *pars magna fuit*. The parts in italics are interlineated in the original, and in some instances the interlineations are written over erasures. Private marks and numbers are put in the margin of some of the paragraphs.

11^o DIE NOV. 1615.

The Conference between Dr. Whiting and Mrs. Turner.

After the receiving of the communion she said, "I thank God and you for the comfort I have received from this good work of your's to-day; my conscience is much more eased than it was, and I would to God all the rest that be in my state would do the like, it would be far the better for them and their souls. I would to God I had known you sooner, that I might have done *you* some good, for now, like an unhappy woman, I am not able to recompense you."

He telling her, that *if* her sins were greater *than* they are, yet God's mercies were greater than they: to which she answered, "Greater they cannot be." She further said Franklyn is a villain, and desired much she might not die that day he died, he is so foul. She came first acquainted with him by her maid *Johan*, other physicians *neglecting* to come to her, as they *were wont* in her husband's time: and said also, that Sir Thomas Mounson preferred Weston to this business, and that he was a proud and odious man not loved in Court; and being demanded whether his hand was not in this business, she said "If you will have me say so I will, and Mounson will be one of them that will say

‘I go to the devil in respect that she had received the communion.’ O that unhappy Lieutenant, that might have saved all this ! a Lieutenant for the [nones]. Would to God he had never had come there !”

“If any were in it that I know, it was the Lord Privy Seal.” Whereupon the Doctor, “But you know some were in it therefore,” &c. ; to whom she said “Conclude what you will.” And being demanded whether the Earl was poisoned, or that he did poison himself as the world talked, she said, “I cannot tell that, but he could die when he list. All the letters that came from the Lord of Somerset to the lady came in the packet of the Earl of Northampton, and from him she had them. She saw the jellies in my Lady’s chamber to go to Sir Tho^s Overbury, but neither knew who made them nor who carried them.”

She confessed she delivered money to Weston, but no such a matter as was spoken against her.

She heard say that the *Prince* was poisoned at Woodstock with a bunch of grapes. For the Earl of Somerset, he spoke so *broad Scottish as she understood him not*—“*but have you not [enoughe] against these already?*” meaning the parties above named. “I would my death would discharge all theirs ! Lord, that so many should have so hard a fortune !”

“I thought *not so notoriously* of my faults, because it was neither against the King, Queen, Prince, nor any of the Lords of the Council.”

She confessed that Weston told her that he was set on work to poison Overbury ; and that all the house said when he was first cast in *prison*, he would never come out again, meaning the *Lord of Rochester’s house*.

She said that the Countess of Somerset should not be hanged, for she would die in childbed by a wet cloth upon her belly after her delivery.

And she with great passion said of my Lady Somerset, “O my Lady Somerset, woe worth the time that I ever

knew her! My love to them and to their greatness have brought me to a dogges death.”

M^{rs} Wedge, sister to M^{rs} Turner, dwelling in Aldersgate Street, said that M^{rs} Horne, servant to the Lady Somerset, can say more than M^{rs} Turner, for she was more innard with her; her husband is one of the guard.

She vehemently exclaimed against the Court: “O the Court, the Court! God bless the King and send him better servants about him, for there is no religion in the most of them, but malice, pride, whoredom, swearing, and rejoicing in the fall of others; it is so *wicked a place, as I wonder the earth did not open and swallow it up.* Mr. Sherif, put none of your children thither.”

She said that she knew that she should die this year, because Foreman had tould her that she should not live out the 40 years of her age, for if she did, she should live till she was a very, very old woman; and till the 5th of January she was not 40.

“Neither my Lady Suffolk nor my Lady Somerset never received the communion; *oh, their greatness hath undone me*; but if there were a religious man amongst them, it is my Lord Knolles. Ah, it is a bad, *wicked, and damnable* world, but if you live M^r Doctor, you shall see it worse;” but would not express anything in particular.

She said that Weston being asked a little before Overbury's death whether he were dead, “No,” said he, “not yet; but now I will go send the knave away packing, I will pull away his pillow and then be gone.”

Written out of Doct^r Whiting's notes, instantly written with his own hand.

EDW. COKE.

Memorandum: In the last will of Doctor Turner, and the last legacy he gave to Sir Arthur Manwaring 10^{li}, to make a ring with this . . . Fato (jungunt^r) amantes.

[Indorsed by Lord Coke] Mrs Turner's confession after judgment, 11^o November.*

10 DIE NOVEMBRIS, 1615.

The Conference between Doctor Whiting and Mrs. Turner, she desiring that it might be in private.

After the Christian exhortation made by John Whiting, Doctor of Divinity, she made a true confession. She confessed herself to be a most vile, abominable, and monstrous sinner; and she being exhorted to make an humble petition to me and particular confession of her sins, "Why should I," said she, "confess to them that will not give me absolution." "Yes," said the Doctor, "upon your firm repentance and lively faith, I can do it as much as any priest, yea, as much as the Pope himself." And afterwards she, after many exhortations and pressing of her, confessed that she knew of the poisoning of Sir Thomas Overbury before it was done, and kept it secret, and denied it upon her examination. She would not hurt that lady that formed plot, who was, she said, "as dear unto me as my own soul;" and therewithall wept and lamented exceedingly: meaned also the Earl of Northampton; and after the passion was somewhat over she with great grief said, "I am afflicted." And being demanded wherefore, answered, "I am afflicted that I did not say so much yesterday when I was tried; for now, seeing that I denied it so openly, who will now believe me? but they will say that I am a dissembler." She also said, "Now that I have confessed it, where is the comfort?" And the Doctor gave her such ghostly consolation as she consented to receive the communion at his hands the next day. And yet she never received the communion after the form of the Church of England in her life, but she said that ever since the Powder

* State Paper Office; Domestic Papers, 1615, Nov. 11, No. 283. This paper is in the handwriting of Sir E. Coke.

Treason she misliked that religion, but yet never received the communion, for that she heard that they that should eat and drink the supper of the Lord unworthily should eat and drink their own damnation.*

14 November, 1615.

This day Mrs. Turner, betweext the hour of ten and eleven, being brought to Tyburn in a cart, was admonished by Dr Whitinge to say something to the people, which were an infinite number, concerning her fact.

She said that she had deserved death, and came thither to die for the fact for which she was condemned. In her trial she confessed she had a most just proceeding, and that she was much bound to his Maj^{ty} for it.

She sayd she should die a Protestant, according to the religion professed in the Church of England, and that she had received the communion, whereby she found exceeding comfort.

She desired all the world to forgive her, and did profess to forgive all the world; and did pray all that were there to pray for her, for she had been a grievous sinner; and wished all people to take example by her, and to detest pride and malice, which had brought her to that.

Which though she said was a shameful death, yet she acknowledged God's mercy in it, for by that means she came to know herself, and was made truly penitent, and desired God that all that were in the same estate with her might receive the like comfort as she had done.

She had, she said, been in the hands of the devil, (or to that effect,) but God had redeemed her from him, and that he had preserved her from many dangers in her life, wherein if she had perished, she had died more miserable for her soul's health than now she hoped she should.

She prayed for the King's Maj^{ty}, that God would give

* State Paper Office; Domestic Papers, 1615, Nov. 10, No. 282. This paper is in Sir E. Coke's handwriting.

him all happiness and preserve him from all dangers ; and desired God to bless the Royal issue and the Council.

Then she demanded if she might not pray for that poor Lady ? Answer being made her by Dr. Whitinge that she should do a charitable deed in it, for she had need of her prayers ; whereupon she said, " I must pray for her, and will pray for her whilst I have breath."

The Sheriff said, that when she named the Lady she did likewise name the Earl, which I heard not.

Then kneeling upon her knees in the cart, a prayer was read unto her by the ordinary, which she repeated after him, and likewise the Lord's Prayer ; which being ended, the rope was put about her neck, being before upon her shoulders, her hands were bound with a black silk ribbon, as she desired, and a black veil, which she wore upon her head, being pulled over her face by the executioner, the cart was driven away, and she left hanging, in whom there was no motion at all perceived. *

Sir E. Coke's notes of Franklin's statements after conviction have been before adverted to, as containing some suspicious interlineations by him, and, what is of more importance, as shewing the worthlessness of Franklin's testimony. These circumstances were well known to the law officers at the time when they made use of selected extracts from Franklin's confessions for the purpose of convicting the Earl of Somerset. The parts in italics are interlineated in the originals, and, in some instances, the interlineations are written over erasures. Private marks and numbers are put in the margin

* State Paper Office ; Domestic Papers, 1615, Nov. 14, No. 290.

of some of the paragraphs. There are no particulars in the State Trials concerning Franklin after his conviction, except that he was executed pursuant to his sentence.

*Franklyn's Behaviour and Speeches before and at the Time of his Execution.**

He had warning about two of the clock *on Friday* in the afternoon that he should suffer the next morning *about nine of the clock*, and Mr. Doctor Whitinge, both *that afternoon* and this morning, dealt effectually with him for the saving of his soul. The psalm of mercy was sung this morning in the common jail; he being on his knees, showed himself penitent and wept bitterly, and, coming down into the parlor, the Doctors asking him how he did, he answered, "Well, he thanked *God*, and the better for *him* and for *his* prayers." And *said* this, "I tell you for my comfort, non sum quod fui; and wheresoever I dine to-day, I doubt not but to sup with the Lord *Jesus*, and I hope to have the start of you all." And thereupon the Doctor desired him to join with him in prayer; and in that prayer which the Doctor uttered he showed himself *very* much moved; holding up his eyes and hands to heaven, showed himself very penitent; and when the Doctor desired of God to forgive him his bloody and sanguinary sin, he held up his hands and eyes, and struck his breast: "O Lord, forgive that, forgive that for thy mercy's sake;" and reconciled himself to *one* Dudson freely, between whom there had been variance, and gave him his hand, *and*, in token of a full reconciliation, told him where to find out witches, *which Dudson before had desired*, and gave *unto him* a note thereof; and being pressed to make a clear discovery

* This heading is to be found in a fair copy of Sir E. Coke's original draft, but it is not in Sir Edward's handwriting.

(in discharge of his conscience) of others that were in this foul act, said that there were three other great *Lords in this foul fact not yet named** [besides the Earl of Somerset, the Lord of Northampton, and that other great Lord, *whom the Doctor . . .*], and, said he, "I shall die within this hour, and on my soul it is true," and by no means would discover it. But it was told him that the Lord Chief Justice would find them out, and *he* said, "*I think so too ;*" and further said, "God bless the Chief Justice, for he is an honourable and worthy Judge as ever was in that place ;" and said, "God bless the King, for he has many enemies ; God bless the Queen, for she was bewitched three years ago." The hangman coming into the prison to ask him forgiveness, he gave him some money, *took him by the hand*, and said, "When time shall come, do me a kindness ; hang me finely and handsomly. Art thou the man that shall hang me ? Thou lookest like a man to do better service, and I hope thou shalt do a greater service shortly among some great or noble ones that shall follow after." And from the prison, being pinioned (as the manner is), he went in a cart to the place of execution, and gave much money to the *poor prisoners and officers, and to the poor by the way ;* and, coming to the tree, and being Christianly exhorted by the Doctor to open both his heart and his mouth, and that he might be truly consolent and penitent as the others *had been before him*, he answered, "I have confessed sufficiently to you *and to my Lord Chief Justice ; I have declared the truth under my hand*, and all that is *set down in any of my examinations before him, or declaration under my hand, which my Lord Chief Justice hath, are true upon my soul.* And I confess that I *am* guilty of this *foul* fact, though I knew not of it at the first ; but afterwards my

* In the margin, opposite the words in brackets is written, in Sir Edward Coke's handwriting, "omit that is between the strike." Accordingly this part is omitted in a contemporary copy preserved in the State Paper Office.

hand was in it, and *I* gave consent to it, for which I am justly condemned, and here I am ready to die;" and kissed the gallows divers times, and openly said to the Doctor that "there were three greater birds and Lords, as I told you this morning, than yet are discovered; and so, and so, and so" (for these were his words). "I pray God bless the King and the Council, and my Lord Chief Justice; he is an honourable man, but *I must needs say he hath done me some wrong;*" whereunto the Doctor said, "My Lord is an upright Judge." "Yea," said Franklyn, "he is right indeed;" and being asked whether he would pray or sing a psalm, answered, "It is no time;" and having tied his napkin about his eyes, he prayed to himself, and held up his hands and put the halter about his own neck, and the Doctor earnestly praying for him, the cart was driven away.*

28 DIE NOV.

The Relation of Doctors.

The Doctors conferring with Franklyn, and the Lord Treasurer being named, he said, that he was as far in as himself.

He said further, that the Lady of Somerset was the most imprudent woman that lived, and there was no (hoe) with her.

He confessed that he said at the bar to some near to him, that there were greater persons in this matter than were yet known, and so in truth then, said he, "there are;" and that, "although the Chief Justice has found *and sifted out* as much as any man could, yet that he is much awry, and has not come to the ground of the business, for more *were to be poisoned and murdered than are yet known, and he mar-*

* State Paper Office; Domestic Papers, 1615, Dec. 9, No. 355. This paper is in Sir E. Coke's handwriting.

velleth that they have not been poisoned and murdered all this while." He said further, that the man was not known that gave him the clyster, and that was it that did the deed.

"I could have put the Chief Justice in the right *way* the first day I came to him, but now he has put me in the right way to heaven."

And being asked whether he should not have had an hundred pounds to be employed to the Palsgrave and the Lady Elizabeth, answered, "An hundred! Nay, five hundred. I will not say, however much."

He said, that the Earl of Somerset and the Countess had the most aspiring minds that ever were heard or read of.

He said, that the Earl of Somersett had a great book of and to rise, which book Franklyn had once; and said, that the Earl neither loved the Prince nor the Lady Elizabeth. "I could say more, but I will not."

"Do not you the King used an outlandish physician and an outlandish apothecary about him and about the late Prince, deceased? Therein," said he, "lyeth a long tale."

Being told that the Queen had been extraordinarily sick and pained, and her young children taken away, said he, "Soft, I am not come to it yet."

"I think next the Gunpowder Treason there was never such a plot as this is. I could discover Knights, great men, and others. I am almost ashamed to speak what I know." He *could have* confessed he had seen twenty letters from the Lieutenant to the Lady of Essex, whereof two he formerly confessed; and Sir Thomas Mounson brought her word from the Lieutenant how Sir Thomas Overbury did, and so did one Knight and another Knight more.

"If I cannot prove these things, I should be ten thousand times more the son of the devil than now I am; but God hath sent me now more grace than so to do."

It was said *to him* that it was not possible that so young

a Lady as *Somerset* should contrive such a plot without some help. "No, no," said he; "who can *think* otherwise? for the Lady had no money, but the money was had from the *old* Lady, out one day 200*l.*, and another day 500*l.*, for she wanted no money."

He gave a glance of Sir William Mounson for the bringing of an hundred pounds for the feeding of the plot.

He said, that there is one living about the town that is fit to be called and questioned about the overtures and the plot against the Earl of Essex.

"I can make one discovery that should deserve my life."

He said that he had some knowledge in all acts, and villainies, and knaveries in the world; but now he had recanted them, and repented himself for them. He thanked God for it.

"I could never find, by any constellation or commutation, that I should be hanged; but ther's the devil had deceived me." FINIS.*

*James Franchlyne his own Arraignment, Confession,
Condemnation, and Judgement.*

First, I protest unto the world that what I have set down is true, unfeigned, and from my heart. I say I was arraigned at the bar, where without sins are judges, the indictment my own offences, the witnesses my own conscience, the jury my thoughts, and my muteness does oppress the disturbance of my soul and a sorrowful repentance. The first that calls me to the bar is murder; to the which, in my heart, I did plead guilty, yet, withal, acknowledging that of myself in my heart I was not contriver of so great a mischief, but, in concealing the intents of others made known unto me, in the eyes of the Lord hold myself worthy of death.

* State Paper Office; Domestic Papers, 1615, Nov. 28, No. 326. This paper is in Sir E. Coke's handwriting.

But whereas the sting of slander hath been openly at the bar, in the face of the world, shot into my bosom about the death of my wife, making me the author and actor in it, I call heaven to bear record of my innocence therein, who had no cause to shorten her life, whose death, by her mean and herself, was thirty shillings a week weakening to my estate.

The next that calls me to this bar is poison, against which, and the villany thereof, I do utterly detest; yet I confess that some of the drugs . . . which were given Sir Thomas Overbury were delivered unto these women by me by their directions, at the first not knowing, yet afterwards I did conceal, and I freely confess unto all the world, that the greatness of one wicked woman, and the unfortunate acquaintance with the other, drew me to this assistance and consent.

And whereas it was at the bar averred by an ungodly, wicked, and perjured fellow, that I should blasphemously and contemptuously deny and speak against God, I do humbly request all charitable Christians to have a more conscionable care and opinion of me; for that I have ever been a Protestant all my lifetime, and trust, by the merits of Christ's death and passion, to buy my inheritance in heaven, and always known to be a frequenter of sermons. And whereas the malice of some misconstruing spirits have cast a suspicion upon me for diabolical practices, as conjuring, calling of spirits, &c., I confess I had a little insight given me by means of a book which came to my hands, but for studying any such works of Satan and those abominable Godless arts, I did never, for . . . to obtain such business I was none.

So crying guilty unto God for all my sinns, here I give sentence against myself, and have no more to speak in my own defence, but sue to the King of heaven for my pardon, fully resolving myself that I shall be entertained into his grace, and care not what tortures this wretched body suffers; and in conclusion commend my soul to heaven, my

body to the grave, my sinns to hell, and my last farewell to the world.

This, all written with Franklyn's own hand after his judgem^t, was desired of his own accord to be published after his decease.*

EDW. COKE.

[Indorsed] A duplicate of Franklyn's confession, which he desired might be printed after his death.†

Along with the dying speeches, be they real or fabricated, or partly both, of the culprits executed for the murder of Sir T. Overbury, the reader ought to take into his consideration a letter written to the Earl of Somerset by the Earl of Northampton, very shortly before his death, and under the immediate prospect of that event. It will be recollected that Northampton died within a few months after the death of Sir T. Overbury. In any point of view, the letter will be deemed curious. Its tendency may be thought, although perhaps only in a slight degree, to exonerate the Earl of Somerset from the imputation of having been leagued with the Earl of Northampton, shortly before the letter was written, in perpetrating a cruel and treacherous murder.

HONOURABLE AND WORTHY LORD,

If the plain dealing both of my physician and surgeon did not assure me of a few days I have to live, I should yet have deferred the putting of these poor suits into your hands, lest I might be thought still rather to value your greatness than your goodness.

* The memorandum and the indorsement are in Sir E. Coke's handwriting.

† State Paper Office ; Domestic Papers, 1615, Nov., No. 323.

But, noble Lord, let me be beholden at my last farewell to such poor toys as do rather ease my mind than pinch any man.

I humbly beseech your Lordship to stay with all the power you can the conferring of the office of the Cinque Ports either upon Pembroke or upon Lisle; for as they hated me, so they will plague my people, and those whom I loved.

Sir Robert Brett, at his coming to the place of Lieutenant, was content to depart with a plot of ground for the enlargement of my garden, which could have been bought of him for no money. My very *conscience* is pressed in this point, and therefore cannot satisfy myself till I have put my earnest suit into the hand of my dearest Lord, to take care that his Majesty admit no Warden, before he has given his word to him not to remove the poor distressed gentleman out of his Lieutenancy.

If I die before midsummer, the farms of the Irish customs are not to pay me, though it be but one day before, which were a great wound to my fortune. No man can help this inconvenience better than your Lordship, by obtaining a Privy Seal, that my executors be paid, if it come to that hard strait of a day or two.

Assurance from your Lordship, that you will effect those final requests, shall send my spirit out of this transitory tabernacle with as much comfort and content as the bird flies to the mountain.

Dear Lord, my spirits spend, and my strength decays, and all that remains is, with my *dying hand* to witness, what my living heart did vow, when it gave itself to your Lordship, as to the choice friend *whom I did love for his virtues*, and not court for his fortune.

Farewell, noble Lord; and the *last farewell in the last letter I look to write to any man*. I presume confidently of your favour in these poor suits, and will be, both living and dying, your affectionate friend and servant,

H. NORTHAMPTON.

Tuesday, at 2.

CHAPTER IV.

OBSERVATIONS ON THE CHARGE AGAINST THE EARL OF
SOMERSET FOR POISONING SIR THOMAS OVERBURY.

IN perusing the trial of the Earl of Somerset, the circumstance which has probably first struck the reader's attention, is what may be regarded as no less a literary than a legal curiosity, Sir Francis Bacon's methodical arrangement of the case for the prosecution. The proofs are distributed under four heads, the first head having four subordinate divisions, and the second being presented under "eight points of a compass;" each matter, according to the degree of its intricacy or its importance, being exhibited in a "single, double, or reflex light." The Earl is to be allowed three opportunities for "cogitation" upon each piece of evidence as it is brought forward; viz. "to take aim, to ruminate, and readvise." Sir F. Bacon takes occasion to observe that he "loves order;" and accordingly we have here before us perhaps the most remarkable specimen, in ancient or modern trials, of the Genius of Order presiding over a systematic arrangement of evidence, deduced, as we learn, from upwards of three hundred examinations. The facts of the

trial themselves will, by the philosophical reader, probably, be thought less interesting than the insight which the arrangement of them affords into the systematic habits of the mind of Bacon. This methodical disposition, it must be observed, was accomplished, in a great measure, by a sacrifice of candour, and, indeed, of truth; for many portions of examination favourable to the prisoner, and known only to the Crown officers, were suppressed, in order that they might not interrupt the uniform current of proof demonstrative of guilt: Sir F. Bacon turns his love of order to the prisoner's prejudice, by observing, that his method is so very clear, that it must be owing to guilt, and not to want of comprehension, if there be any omission to give as clear an answer to it. With an affectation of benevolence which may create a smile, he promises kindly to remind the prisoner of each particular of the proofs which has not been met by a specific reply.

Besides unfolding to the Peers a luminous compendium of the whole case for the prosecution in an opening speech, Sir F. Bacon keeps alive their attention to the inferences drawn from each particular piece of evidence, by short prefatory speeches introducing the various subdivisions of the proofs. These observations so interposed whilst the evidence is in progress are not confined to the purpose of elucidation merely, but are often of an argumentative or declamatory character. Of such side-

thrusts at the prisoner, the following examples may be cited out of a number of the like kind :—“I think he was a piece of a lawyer, by his insinuating with the next of kindred for fear of appeals.” “In good faith these two made plays of all the world besides themselves; but though it was play then, it hath proved tragical since.” “He must bleed!” (meaning simply, he must pay money for being appointed Lieutenant of the Tower) “a strange presage!” Upon the Earl saying “that it was once resolved some one at Court should fall out with Sir T. Overbury, but that was not *followed* ;” Sir F. Bacon chimes in, “Note, my Lords, he does not say *disliked*.” When the Earl, in the course of his speech in his defence, says that his furthest design in the imprisonment of Overbury was that there should be no impediment to the marriage, and that this he communicated to Lord Northampton and Sir G. Helwysse ;” Serjeant Montague interrupts him by saying “You could not couple yourself worse than with them two.” And immediately after the production of the last piece of evidence for the prosecution, Sir F. Bacon observes, “I think there is none here but wonders, seeing that all poisons be works of darkness, how this should so clearly appear; but it seems his greatness in fortune caused this grossness in offending.”

After the opening speech upon trials of the present day, explanations and comments are not permitted during the progress of delivering the evi-

dence. We see, from the Earl of Somerset's trial, what would follow if the rule on the subject which now prevails were relaxed. The import of the different proofs may, indeed, be thought to be better understood by means of such a running commentary; but the winnowing of observations from evidence, which is an easy process to us in reading a report of the Earl of Somerset's trial, would have been more difficult to the Peers who were called upon to come to a decision, after straining their attention during many hours, throughout which speeches and examinations had been perpetually intermixed.

Similar desultory speeches are to be found in most of the ancient State Trials. For example, in that of Sir W. Raleigh, whilst a letter written by Lord Cobham was being read, at a passage in which some observations of Raleigh are related, Sir E. Coke interposes, "Ah! is not this a Spanish heart in an English body?" And in the same letter, where Cobham mentions that Raleigh communicated with him by throwing an apple into his window in the Tower, Sir E. Coke interposes that it was "Eve's apple."

It may be easily conjectured, that, in desultory conflicts on the effect of individual pieces of evidence, the Earl of Somerset would be very unequally matched against three experienced law officers, even if the Lord High Steward had im-

partially held the scales between them,* and if the leading counsel had not been Sir Francis Bacon.

It has been alleged, in defence of the ancient rule which debarred prisoners from the benefit of legal assistance at their trials, that the Judge was deemed the prisoner's counsel. The Lord High Steward was an officer appointed by the King, and was selected, contrary to the principles of jurisprudence, after the person to be tried by him was known. No prisoner, therefore, who had incurred the resentment or aversion of his Sovereign would voluntarily have acquiesced in the assignment of a *counsel* thus enlisted in the interest of his prosecutor.

Accordingly, we find that the Lord High Steward, at three different stages of the proceedings, conjured the Earl of Somerset to abandon his defence, and submit himself to the King's mercy, which he artfully intimated might be obtained by making a full confession. The last of these attempts to shake the Earl's resolution was at the moment when he was just going to make his speech in answer to the accusation, and when he had need to have roused within himself all the energies of his nature. Yet such was the crisis seized by the Judge as most

* In the printed reports of Sir W. Raleigh's trial, the Chief Justice is represented to have said, "Mr. Attorney speaks out of the zeal of his duty for the service of the King, and you for your life; be *valiant* on both sides." Mr. Jardine says, that, according to the MS., the word *patient* must be substituted for *valiant*.

favourable to an endeavour to daunt and paralyse him !

It is to be considered, that, at the period when the Earl of Somerset was tried, prisoners had no opportunities of hearing evidence produced against them previous to their arraignments. In his case the proofs had been collected and marshalled with consummate skill, and the observations upon them had been pondered on in consultation long before the day of the trial. He was to hear them for the first time on that day. He was brought to the bar from the Tower, after an imprisonment of about eight months, and was totally inexperienced both in the examination of evidence, and in the delivery of his sentiments before a public assembly.

On the subject of the disadvantage a prisoner lay under, in former times, for want of the aid of counsel, it is interesting to refer to the following expressions of the Duke of Norfolk, upon his trial, in the reign of Queen Elizabeth. "My memory was never good ; it is now much worse than it was : sore troubles and cares, evil rest and close imprisonment, have much decayed my understanding." "I am unlearned and unable to speak, and worst of all to speak for myself ; I have neither good utterance, as the world well knoweth, nor understanding." "I stand here before you for my life, lands, and goods, my children and my posterity, and that which I esteem most of all, for my honesty. I am an unlearned man." "I have had very short warning to

provide an answer to so great a matter, not fourteen hours in all, both day and night. I have had short warning and no books, neither book of statutes, nor so much as a breviat of the statutes. I am brought to fight without a weapon." "May it please your Grace, and you, the rest of the Lords here, I beseech you, if the law will permit it, that I may have counsel for the answering of this indictment." To these reasons and entreaties, Catline, Chief Justice, answers, "My Lord, you cannot have counsel allowed; your Grace is to answer to your own fact only, which yourself best know, and may without counsel sufficiently answer."

In like manner Lord Audley, at his trial in the reign of Charles I., urges, "I have been a close prisoner these six months, without counsel or advice; I am ignorant of the law, and but weak of speech at the best, and, therefore, I desire to have liberty of counsel to speak for me."

In the reign of Charles II. papers were taken away from Colledge (the Protestant joiner), who, in the opinion of Sir John Hawles, made the best defence ever made to a capital indictment. They were taken from him because they had been furnished by an attorney, for his defence. Serjeant Jeffries said on the occasion, "To allow you these papers, is to allow you counsel by a side-wind:" and to the attorney he made use of a threat, "If Mr. Colledge have such *a thing* as a solicitor, I shall crave leave to put that solicitor in mind

of the case of one that was indicted for high treason."

At Lord Stafford's trial, Sir W. Jones and Maynard (it is painful to tell such a thing of such men) objected that the prisoner's counsel for matter of law stood too near him, so as to be able to suggest matter of fact. They objected also to his handing a written defence to a clerk to be read, which he said he did because he was agitated by the shouting and hooting of the rabble.

Lord Wintoun's voice at his trial was so low, that a clerk was obliged to repeat everything he said. In beseeching for the assistance of counsel, he said, "I have never examined a witness in my life. It is very hard to have none to speak for me, whilst there are twenty managers of my impeachment to speak against me."

In the denial of counsel to prisoners no regard was paid to the imbecility of age or sex. Mrs. Gaunt, who was burnt to death for treason in the reign of James II., and Lady Lisle, in the same reign, whose sentence of burning was commuted to that of beheading, whose age was past seventy, and who is said by Burnet to have fallen asleep at her trial from exhaustion, were left unaided to contend with an array of King's counsel, and in times when Judges were actually degraded to the bar for not conforming to the King's pleasure.*

* Sir E. Coke and Chief Justice Pemberton are two conspicuous instances of such degradation. Pemberton after his removal practised in the courts as a serjeant.

Sir E. Coke justifies the denial of counsel to prisoners on the ground that the testimony and proof of crimes, in order to convict, ought to be "so clear and manifest, that there can be no defence of them." And yet Sir F. Bacon, in his opening speech at the Earl of Somerset's trial, observes, that, in cases of poisoning, "testimony is not to be required, but the Peers must take upon them Solomon's spirit, who, when there could be no witnesses, collected the act from affection."

As a member of the Criminal Law Commission, the author had a large share in recommending and preparing a law, for securing the privilege for accused persons in England of a full defence by counsel: and he had afterwards the satisfaction of proposing in the Supreme Council of India a law which was passed for establishing the same privilege in all Her Majesty's courts throughout the territories of the East India Company.

We find an enumeration of other hardships imposed on prisoners in former times, at their trials, besides the denial of counsel, in Rushworth's Historical Collections, wherein the following reasons are assigned, why the converting of the articles preferred against the Earl of Bristol, in the reign of Charles I., into an indictment, would operate to the prejudice of that Peer. "1. He can have no counsel. 2. He can have no witness against the King. 3. He cannot know what the evidence against him will be, in a convenient time to prepare for his de-

fence: and so the innocent may be condemned, which may be the case of any Peer.”

Sir N. Throckmorton, at his trial, in the reign of Queen Mary, desired that a witness of the name of Fitzwilliam might be examined on his behalf; which request gave rise to the following scene.

Attorney General. I pray you, my lords, suffer him not to be sworn, neither to speak; we have nothing to do with him.

Throckmorton. Why should he not be suffered to tell truth? and why be ye not so well contented to hear truth for me, as untruth against me?

Hare, Justice. Who called you here, Fitzwilliam, or commanded you to speak? You are a very busy officer.

Throckmorton. I called him, and do humbly desire that he may speak and be heard as well as Vaughan, or else I am but indifferently used; especially seeing my master attorney doth so press matter against me.

Southwell, Justice. Go your ways, Fitzwilliam, the court hath nothing to do with you. Peradventure you would not be so ready in a good cause.

Then John Fitzwilliam departed the court, and was not suffered to speak.

Throckmorton. Since this gentleman's deposition may not be admitted, I trust, you of the Jury can perceive, it was not for anything he had to say against me; but contrarywise, it was feared he would speak for me.

Long subsequently to the time when witnesses were so far better received than John Fitzwilliam, that they were permitted to give evidence for an accused party, there was this distinction between them and witnesses for a prosecution, that they were not allowed to be sworn. At the trial of Whitbread and others for the Popish plot, in the 31st of Charles II., Chief Justice North says, "there never was any man, in a capital case, sworn against the King;" and he answers an argument for witnesses being sworn, by saying, "you argue against the known practice of all ages." At the trial of Hulet the Regicide, and various other occasions, the judges, in balancing the evidence for the prosecution against that for the prisoner, desire the jury to bear in mind, that the witnesses for the prisoner were not sworn, and therefore were entitled to less credit. It was not until the passing of the statute of the 1st Queen Anne, Sess. II. c. 9, that, in all cases of felony as well as treason, witnesses for prisoners were allowed to be examined upon oath.

In the case of Rosewell, tried for high treason in the 36th of Charles II., the question turned upon the point, whether certain treasonable sentences had been delivered in a Sermon at a Conventicle. The prisoner defied the witnesses of the Crown to repeat a sentence that he should pronounce in his usual tone of voice, of equal length with those to which they had deposed. The witnesses against the prisoner were three women, and

he called six witnesses who were present at the sermon to contradict them: he was found guilty. In supporting the credit of his own witnesses, he says, "I do not know one man of them but fears a lie, and *would have sworn* to the truth of what they have spoken." Lord Chief Justice Jeffries, in summing up to the jury, put it strongly to them whether they would find the three witnesses for the prosecution guilty of *perjury*? and distinguished between what was *sworn* by them and what was *testified* by the witnesses for the prisoner.

The admitting of witnesses on behalf of a prisoner, however, would have little availed him, whilst he was unprotected by counsel, and whilst those witnesses would have been exposed to the browbeating of unscrupulous law officers, and partial judges. The following specimen of language used by Chief Justice Jeffries to a person of the name of Dunne, may afford an example of the manner in which a witness might be nearly frightened out of his senses.

Lord Chief Justice. Dost thou believe that any one here believes thee? Prythee what trade art thou?

Dunne. My lord, I am a baker by trade.

Lord Chief Justice. I assure thee thy bread is very light weight, it will scarce pass the balance here.

Lord Chief Justice. How came he to trust thee with his house?

Dunne. The Lord knows, my lord.

Lord Chief Justice. Thou sayest right, the Lord only knows; for by the little I know of thee, I would not trust thee with twopence.

Lord Chief Justice. Remember I give you fair warning, do not tell me a lie, for I will be sure to treasure up every lie thou tellest me, and thou may'st be certain it will not be for thy advantage. I would not terrify thee nor make thee say anything but the truth; but assure thyself I never met with a lying, sneaking, canting fellow, but I always treasured up vengeance for him.

Lord Chief Justice. It is God's infinite mercy that for these falsehoods of thine he does not immediately strike thee into hell!

It is, then, to be kept in mind, in reviewing the trial of the Earl of Somerset, that, as it would seem, he would not have been permitted to call any witness for his defence: it is clear, that no witness called by him could have been sworn: what treatment any witness would have received from Sir F. Bacon may be judged of, by reflecting that this great philosopher and lawyer, in his moments of human frailty, was habituated to extracting evidence by torture with the rack.

The indictment upon which the Earl of Somerset was tried, stripped of its technicalities, contained an accusation of his having procured Weston (Sir T. Overbury's gaoler) to administer poison to Sir T. Overbury, whereof Sir T. Overbury died. The

administering of these poisons was thus stated, viz., roseacre given on the 9th of May, 1615; white arsenic on the 1st of June; mercury sublimate in tarts on the 10th of July; mercury sublimate in a clyster on the 14th of September in the same year. Sir T. Overbury's death was stated to have occurred, and did in fact occur, on the 15th of September, 1615.

As we know that the Earl of Somerset was taught Latin by King James, it may be thought unnecessary to inquire whether the record, which was in the Latin language, was explained to the Earl in English.* Much of its technical language, we may suppose, would have been unintelligible to him; and as he had no opportunity of inspecting it before it was read over to him, and was called upon to plead immediately afterwards, it may be thought that he would be rather perplexed than assisted by being arraigned upon an indictment.

The ancient formality of an indictment, which has been bequeathed to us by our forefathers, has received many grave encomiums for merits that it has been extolled for possessing, but in which it is notoriously deficient. Besides the objections to its

* Indictments and other legal proceedings continued to be in Latin till the statute of 4 Geo. II. ch. 26. Blackstone, as is customary with him, regrets this innovation upon the ancient practice of the law. One of his arguments in support of the ancient use of Latin is, that on account of its brevity there is a saving of stamps!

technicalities, from which (as it is meant for a guide to juries and prisoners) it ought to be wholly free, and to the inconveniences of a finding by a grand jury, it is wanting in that degree of certainty which is affected by its terms, but which is totally alien to its legal import.

The prudery of the law required that the Earl of Somerset should be charged on particular stated days, at certain designated places, to have been instrumental to Sir T. Overbury's death, by the administration of poisons which should be specifically described. All this, it has often been repeated in law-books, is necessary, in order that the prisoner may know the charge against which he is to defend himself, that the jury may know what they are to try, and that justice may not be scandalized by a person being tried twice for the same offence. But this hypocritical mask of certainty vanishes, when we are told that neither the time, the place, nor the particular means of death are matters of substance; and that it was competent for the Peers to convict the Earl of Somerset, though the poisons actually administered were different from any alleged in the indictment; and further, though the times and places were totally at variance; provided *some* times, *some* places, *some* poisons were specified in the indictment for the purpose of illusory precision.* On the im-

* That the time and place in indictments are immaterial, was expressly determined in Sir H. Vane's case, Howell, ("State Trials,") vol. vi., and in the trial of Charnock and others, before

peachment of Lord Wintoun in 1716, the Attorney-General boldly avows that the forms of an indictment are only a mockery of certainty. He says, "The prisoner loses no benefit, *nor gets any* by having a day changed or omitted; for since it is *of no use*, he must provide for his defence as if no day was laid."

The Overbury trials afford the leading authority for holding, that the outward certainty of indictments is totally unsubstantial. On the trial of the Earl of Somerset, it was thought of so great importance to intimate to the Peers that they might wander out of the record, that we see Sir E. Coke steps forward to corroborate Montague's doctrine on the subject. Nor is this surprising, for three out of the four acts of poisoning alleged in the indict-

Lord Holt, (Howell's "State Trials," vol. xii. ; and the trial of Lord Balmerino, (Howell's "State Trials," vol. xviii.); Lord Wintoun's case (Howell's "State Trials," vol. xv.). That a day must be stated, appears from established usage; see also Leach's case, Hawk. P. C. b. 2, c. 25, and the authorities there cited, and Lord Kenyon's judgment in *R. v. Holland*, 5 T. R. 624; Lowie's case (Howell's "State Trials," vol. xiii.). After indulging so much camel-like laxity in indictments, the law often strains at gnats in quashing them for insignificant *flaws*. The following specimen of a coroner's inquest in the time of the Protectorate, perhaps, runs into the extreme of precision as to the manner in which poison was taken, but is silent as to the nature of the poison. The jury find that "The said Miles Sindercombe then and there certain poisoned powder *through the nose* of him the said Miles, *into the head* of him the said Miles, feloniously, wilfully, and of malice towards himself aforethought, did *snuff and draw*, by reason of which *snuffing and drawing*, &c."

ment were stated to have occurred *more than two months* before Overbury's death; and no attempt even was made to bring home to the Earl of Somerset a knowledge of any but these obsolete poisons. Hence it was politic that the Peers should be told, that they were at liberty to find that Sir T. Overbury died by means of any poisons whatever, although unknown and unimagined by the framers of the indictment.

The speeches of Sir E. Coke and Sir F. Bacon, by a convenient sophism, tended to make the more than poetically licensed vagueness in the averments of indictments a pretext for *laxity of evidence*; thus drawing no distinction in this respect between a parchment roll and the minds of jurymen. For Sir E. Coke says, in the Star Chamber proceeding, "it was not really known by what poison Sir T. Overbury had been killed." And upon one of the trials he observes, "that the jury were not to expect precise proof of the means of death, seeing that thus it would be impossible to convict a prisoner of poisoning, who useth not take any witnesses to the composing of his own sibber sauces." And Sir F. Bacon, in his opening speech on the Earl of Somerset's trial, says, "If in all cases of impoisonment you should require testimony, you should as good proclaim impunity;" and he asks, "who could have impeached Livia or Parasetis by testimony?"

This kind of reasoning is often carried too far in the present day, especially with regard to the evi-

dence of spies and informers, and in the proofs of adultery, and other secret matters. It is asked, if the evidence be not credited, how are facts of the nature in question ever to be proved? The true point seems to be this: If the evidence leads the mind to a satisfactory conviction of guilt, it is not a good infirmative reason to allege, that facts of another nature may generally be proved by more unimpeachable testimony. But although we are not admitted to see the *sibber sauces* of a poisoner, and therefore cannot reasonably complain that we are not furnished with direct testimony, but, in the place of it, with satisfactory presumptive evidence, we, nevertheless, ought not to form weak or rash presumptions of the guilt of a person charged with poisoning; and we should sift with great care the truth of the circumstances which are the basis whereon any presumptions we may form are built.

In adverting to the nature of the evidence produced at the Earl of Somerset's trial, the opinion of his guilt or innocence ought not to be judged of implicitly according to the conformity of the testimony produced with the rules of evidence adopted in courts of justice at the present day; nevertheless it may be important to draw attention to a few considerations affecting the weight due to the decisions of tribunals which have not been governed by such rules.

Perhaps there is no rule now in force for the

rejection of any kind of testimony which may not occasionally exclude some glimmerings of light conducive to the discovery of truth. After allowing full force to all objections incident to evidence interdicted by rules of law, it will sometimes be entitled to a degree of appreciable weight in supporting or negating presumptions drawn from the better ascertained facts of a case. Protected as we are, by the lapse of more than two centuries, from the influence of prejudices and passions; criticising the arguments of Sir F. Bacon, and not fascinated by the eloquence from his lips; sitting in the quietude of our studies, and not compelled to deliver a verdict in a state of bodily and mental exhaustion; having, moreover, unbounded confidence in our own powers of discrimination, which peradventure may have been cultivated and matured by study and experience;—we may hope to be enlightened by evidence, of which the admissibility is quite contrary to modern rules. But we are not warranted, on that ground, in condemning, with Mr. Bentham, the English law of evidence, as though it were manufactured solely for the convenience of the persons whom he designates by the disrespectful appellation “Judge and Co.” We may, nevertheless, regard modern rules as wisely established with reference to jury-trial, an imperfect, indeed, but, in a multitude of cases, the most eligible organ for the ascertainment of truth, especially in criminal matters.

It is to be observed, that the good sense of a verdict is frequently in jeopardy from the want of intelligence of any one of the twelve jurors. There is, also, great danger of error from the circumstance that in matters of domestic or historical truth, with which jurymen are chiefly familiar, evidence is ordinarily relied upon of a nature which in judicial investigations is very commonly found to be delusive. And with regard to the allowances with which evidence of such a nature should be received being pointed out by the judge or counsel, how many observations, in a long or perplexed case, which might with propriety be made to juries, escape attention, even as evidence is limited in the present day ! A skilful advocate, indeed, will commonly confine his remarks to the more prominent points of a case, passing by all the rest, for fear of wearying the attention of a jury ; and from an opinion, that jurymen, in making up their minds even after the longest inquiries, and perhaps in an inverse proportion to their length, commonly limit their consideration to a very small compass of circumstances.

Exalted as our opinions may be of our own impartiality, intellects, experience, and physical strength, nevertheless, if with minds inflamed by personal or popular feelings, subjugated by the charms of eloquence, and overwhelmed with the multitude of proofs, we had been called upon to deliver a verdict at the Earl of Somerset's trial, by torch-light, after sitting from nine o'clock in the

morning in Westminster Hall, crowded as it was, at the end of May, we shall perhaps think that we should have been more likely to have formed a correct judgment on the case, if a portion of the less satisfactory evidence had been spared, so that we might thus have been able, without distraction, to have given undivided attention to the proofs on which our opinions must mainly have depended.

The verdict of the Peers who tried the Earl of Somerset must, it is conceived, be subject to some disparagement from the likelihood of their not having weighed the hearsay and other proofs interdicted by present rules in our nice scales, but of their having probably yielded a too implicit credence to whatever in the shape of evidence was placed before them under the sanction of the Lord High Steward, and was recommended by the ingenuity and eloquence of Bacon.

Sir F. Bacon, in a letter to King James, writes concerning the evidence he intended to produce on the Earl of Somerset's trial : "There will be ground of mercy on his part upon the nature of the proof, and, *because it rests chiefly on presumptions*. For certainly there may be an evidence so balanced, as it may have sufficient matter for the conscience of the Peers to convict him, and yet leave sufficient matter in the conscience of a King to pardon his life : because the Peers are astringed by necessity to acquit or condemn ; but grace is free : and, for my part, I think the evidence in this present case will

be of such a nature." It would appear that Bacon was here inventing a plausible pretext for pardoning Somerset. He can scarcely be thought to have really entertained an opinion, that it would most probably happen that it would be the duty of the Peers to convict upon presumptions so uncertain as to leave it the duty of the King to pardon.

The passage seems to imply that presumptive evidence is less satisfactory than that which is direct. On this subject very different opinions have been delivered by high judicial authorities. On the trial of Donellan, Mr. Justice Buller thus directed the jury on the subject of presumptive evidence: "On the part of the prosecution a great deal of evidence has been laid before you. It is all circumstantial evidence, and, in its nature, it must be so; for, in cases of this sort, no man is weak enough to commit the act in the presence of other persons, or to suffer them to see what he does at the time; and therefore it can only be made out by circumstances, either before the committing of the act, at the time when it was committed, or subsequent to it. And a presumption which necessarily arises from circumstances is very often more convincing and more satisfactory than any other kind of evidence, because it is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all of those cir-

cumstances. But if the circumstances are such as, when laid together, bring conviction to your minds, it is then fully equal, if not more convincing than positive evidence."

In the remarkable trial of Abraham Thornton for murder, which gave occasion to the curious proceedings concerning a trial by battle, Mr. J. Holroyd told the jury, "Crimes of the highest description might be proved by circumstantial evidence only; and sometimes that kind of evidence was the strongest of all others. But then it must be taken and compared in all its parts, and considered in all its bearings. Witnesses might vary in their testimony, in stating the appearances of the same things; but facts could not be altered, they always spoke for themselves, and would not give way to opinions. But these circumstances must be clear, full, and perfect: nothing should be wanting to complete the connection, or the whole would necessarily fall to the ground."

In the great Anglesea case, in the State Trials, one of the judges expresses himself thus in favour of the superior probative force of presumptive over that of direct evidence: "Witnesses, gentlemen, may either be mistaken themselves, or wickedly intend to deceive others; God knows, we have seen too much of this in the present cause, on both sides! But circumstances and presumptions, naturally and necessarily arising out of a given fact, *cannot lie*. And it must be left to your consideration, whether,

in this case, the presumptions arising from kidnapping and the prosecution for murder (practices adopted against the youth whose title as legitimate heir to the earldom of Anglesea was in dispute) do not speak stronger than a thousand witnesses."

Our belief in every kind of evidence depends on a presumption, that the existence of facts is conformable to the testimony relating to them; and this presumption, even in the case of direct evidence, is susceptible of every shade of weakness or strength. In the instance of what is commonly called presumptive evidence, there is, in the first place, the presumption of accordance between testimony and fact, which has just been spoken of, to be formed; and then there is to be built upon it an additional inference of reasoning. Every new inference of reasoning is accompanied with a probability of error, which probability admits of an indefinite number of degrees: for, in judicial matters, when we attribute the existence of one fact, which we may call the principal fact, to a particular cause or motive, on account of the existence of other auxiliary facts proved in evidence, there will commonly be ways of accounting for the principal fact from some other cause or motive, which are more or less deserving of attention. In such cases, therefore, the discretion of courts of justice is exercised in embracing or repudiating the various theories that may be suggested concerning the causes or motives to which principal facts may be ascribed.

But although presumptive evidence, according to this view of it, is liable to sources of error, from which direct evidence is exempt, yet it very commonly happens that, out of all the possible causes or motives to which the principal facts of cases may be ascribed, one is so much more probable than any other that ingenuity can suggest, as to leave no reasonable doubt of a conclusion which may be safely drawn. And with regard to the precedent presumption of the conformability of facts to the statements of them, the advantage is generally much in favour of presumptive evidence. In those admirable models for legal reasoning upon facts, Lord Stowell's judgments, his lordship very usually lays out of his consideration the statements of the witnesses which seem most conclusive of the question in dispute, as being contradicted, or as probably the exaggerated testimony of partizans; and he rests his determination upon some inferences of common sense and common experience of human nature drawn from facts which both parties have admitted to be true. He appears to have deemed it wiser, to build upon a safe foundation an inference of reasoning, than to give assent to direct and positive statements, which would, indeed, be decisive, if credited, but which proceed from fallible or suspicious sources.*

The preceding remarks may appear more intelli-

* The subject of a comparison between direct and circumstantial evidence is particularly considered in Bentham's "Rationale of Judicial Evidence," and in "Phillipps and Amos on

gible by the illustration of a few remarkable cases on the subject of both kinds of evidence, presumptive and direct, though the nature of the present work will only admit of a very brief notice of them.

In the year 1805, a remarkable case was tried at Warwick, in which the question was, whether a person of the name of Meccham was drowned, or had drowned himself, before or after the date of a commission of bankruptcy which was taken out within a day or two of his being missed? Meccham's body was discovered five weeks and four days subsequently to the day on which he left his house at Perry Bridge, three miles from Birmingham, in which town he lived. In his pockets were found sixteen pounds, and his wife's bracelets, which circumstances were relied upon as showing that he left home with a design of absconding, and not of drowning himself. On the other hand, Dr. Gibbes, of Bath, who had for many years been engaged in making experiments on the formation of *adipocire* from the human muscle after having been in water, and who had examined a portion of the muscle that had been dissected from Meccham's body, was of opinion that the deceased must have been

Evidence." Lord Stowell's decisions, referred to in the text, chiefly relate to suits for divorce on the ground of cruelty. His Lordship's judgments in divorces on the ground of adultery are excellent specimens of a sagacious and prudent deduction of inferences from auxiliary facts.

in the water the whole of the time from about the 3d of November, when he was missed, until the 12th of December, when the body was found, for the muscle to have been transformed into *adipocire* in the manner in which it appeared to be. The jury were of opinion that the deceased was not alive at the time the commission of bankruptcy was taken out.

Dr. Christison, in his treatise on poisons, mentions that "At the trial of Freeman for the murder of Judith Buswell, at Leicester, in the year 1829, the body of the deceased was found stretched out in bed in a composed posture, with the arms crossed and the bed-clothes pulled smoothly up to the chin, and, in her right hand lay a small narrow-necked phial, from which about five drachms of prussic acid had been taken, and which was corked and wrapped in paper. The question arose whether deceased, after drinking the poison could, before becoming insensible, have time to cork the phial, wrap it up, and adjust the bed-clothes? The medical men, with one exception, gave it as their evidence, that the supposed acts of volition, although within the bounds of possibility, were in the highest degree improbable. Three dogs were killed for the purpose of experiment. One dog was killed with four drachms in eight seconds, another with four drachms in seven seconds, and another with four drachms and a half in three seconds. The jury

found the prisoner not guilty." Upon reference to a copy of this trial published by the author,* it will appear that a presumption in the prisoner's favour was relied upon, that, in order to administer the deadly dose, he must have opened three doors without noise, and passed through the sleeping-room of a fellow-resident (the shopman of his master) in order to get at the apartments of the deceased.

In the trial of Donellan for the murder of Sir Theodosius Boughton, it was considered to afford a strong presumption of guilt, that Donellan took pains to rinse the bottle which, it was alleged, contained the laurel-water poison with the administering of which he was charged. The evidence upon which subject was as follows:—Lady Boughton, the mother of the deceased, having deposed to having found her son with his eyes fixed upwards, his teeth clenched, and froth running out of each corner of the mouth, is asked,

Q. What did you do upon that?

A. I ran down stairs, and told the servant to take the first horse he could get, and go immediately for Mr. Powell.

Q. Was any other person sent for?—No.

Q. When did you first see Mr. Donellan after that?

A. I saw him in less than five minutes; he came

* See Amos's Lectures on Medical Jurisprudence.—*Medical Gazette*, vol. viii., p. 578.

up to the bed-chamber where my son was, and asked me, "What do you want?" I said "I wanted to inform him what a terrible thing had happened; that it was an unaccountable thing in the doctor to send for such a medicine—if it had been taken by a dog it would have killed him; and I did not think my son would live." He asked me "in what manner Sir Theodosius was taken;" and I told him. Then he asked me where the physic bottle was? I showed him the two draughts. He then took up one of the bottles, and said, "is this it?" "Yes," said I. He took it up, poured some water out of the water-bottle, which was just by, into the phial, shook it, and then emptied it out into some dirty water which was in a wash-hand bason.

Q. Did you make any observation upon that conduct?

A. After he had thrown the contents of the first bottle into the wash-hand bason of dirty water, I observed "that he ought not to do that." I said "What are you at? you should not meddle with the bottle." Upon that he snatched up the other bottle, and poured water into it, and shook it; then he put his finger to it, and tasted it. I said, "What are you about? you ought not to meddle with the bottles." Upon which he said, "I did it to taste it."

Q. Had he tasted the first bottle?

A. No.

Q. Did you mention to the coroner's jury, in your account there, the circumstance of the prisoner's washing the bottle?

A. I did.

Q. When you returned home to Lawford-Hall, had you any conversation with Mr. Donellan respecting that circumstance?

A. He said to his wife, before me, "that I had no occasion to have told of the circumstance of his washing the bottle; I was only to answer such questions as were put to me, and that question had not been asked me."

And with regard to Donellan's demeanour at the coroner's inquest, when Lady Boughton was giving an account to the coroner of the rinsing of the bottles, William Crofts deposed—

Q. Did you attend at the taking the coroner's inquisition, at Newbold, upon the body of Sir Theodosius Boughton?

A. I did.

Q. You were, I believe, one of the jury?

A. I was.

Q. Lady Boughton was examined upon that occasion?

A. Yes, she was.

Q. Did you, during Lady Boughton's examination, observe any particular behaviour in Captain Donellan; if you did, give an account of it?

A. When Lady Boughton said, "Captain Donel-

lan rinsed the bottles," I saw Captain Donellan catch her by the gown and give her a twitch.

The following case is related in the fifth volume of the "Causes Célèbres."

"Voici un autre fait, dont j'ignore l'époque, et qui m'a été transmis par la tradition. Avant qu'on eût rebâti cette longue suite de maisons qui bordent la place Saint Michel à Paris, en face de la rue Sainte Hyacinthe, une marchande veuve et âgée occupoit, au même endroit, une petite boutique, avec une arrière-boutique où elle couchoit. Elle passoit dans le quartier pour avoir beaucoup d'argent amassé. Un seul garçon composoit, depuis longtems, tout son domestique. Il couchoit à un quatrième étage, dont l'escalier n'avoit point de communication avec l'habitation de sa maîtresse : il étoit obligé, pour s'y rendre, de sortir dans la rue ; et lorsqu'il s'alloit coucher, il fermoit la porte extérieure de la boutique, et emportoit la clef, dont il étoit seul depositaire. On voit un matin la porte ouverte plutôt qu'à l'ordinaire, sans qu'on remarquât aucun mouvement qui annonçât que la marchande ou son garçon fussent levés. Cette inaction donne de l'inquiétude aux voisins. Cependant on ne remarque aucune fracture à la porte ; mais on trouve un couteau ensanglanté, jetté au milieu de la boutique, et la marchande assassinée dans son lit à coups de couteau. Le cadavre tenoit dans une main une poignée de cheveux, et dans l'autre une

cravate. Auprès du lit étoit un coffre, qui avoit été forcé. On saisit le garçon de boutique : il se trouve que le couteau lui appartient. La cravate que tenoit la marchande étoit à lui. On compare ses cheveux avec ceux qui étoient dans l'autre main, ils se trouvent les mêmes. Enfin, la clef de la boutique étoit dans sa chambre ; lui seul avoit pu, moyennant cette clef, entrer chez la marchande, sans fracture. D'après des indices ainsi cumulés et si concluants, on lui fait subir la question ; *il avoue*, —il est rompu. Peu de tems après, on arrête un garçon marchand de vin, pour je ne sçais quel autre délit : il déclare, par son testament de mort, que lui seul est coupable de l'assassinat commis à la place Saint Michel. La cabaret où il servoit étoit attenant à la demeure de la marchande égorgée. Il étoit familièrement lié avec le garçon de boutique de cette marchande ; c'étoit lui qui mettoit ordinairement ses cheveux en queue ; quand il le peignoit, il avoit soin de ramasser ceux que le peigne detachoit, et dont il avoit, peu-à-peu, formé la poignée qui s'étoit trouvée dans la main du cadavre. Il ne lui avoit pas été difficile de se procurer une des cravates et le couteau de son camarade, et de prendre, avec de la cire, l'empreinte de la clef de la boutique, pour en fabriquer une fausse."

The following cases tend to show the judicial mistakes sometimes made with regard to direct testimony.

At a trial in which the Author was counsel, a man was indicted for burglary, accompanied with great violence and cruelty, and the prisoner's person was identified by the woman whose house was robbed, and who described particularly the clothes he had on. Being told that the prisoner's life depended on the evidence she was giving as to his identity, the witness turned towards the bar, and having surveyed the prisoner very deliberately for several minutes, said, "That is certainly the man." On this one of the principal officers of the Birmingham police said, that he thought she was mistaken, and that she had been deceived by the appearance of another prisoner, upon whom sentence of death had been passed the day before for a different burglary, and that he was led to think so, as well from the strong resemblance between the two persons, as from the circumstance that the dress the woman described was precisely the dress of the other man. The other man was then produced in Court by order of Baron Garrow, when the resemblance appeared very remarkable, and the witness herself expressed doubts as to which man had robbed her. An acquittal consequently followed, though at one period of the trial no person in Court thought that there was the slightest chance of the prisoner escaping being executed.

The following case is related in Burnett's Treatise on the Criminal Law of Scotland.

A girl whose chest had been broken open, and whose clothes had been carried off, swore to the only article found in the prisoner's possession, and produced, viz., a white gown, as being her property. She had previously described the color, quality, and fashion of the gown, and they all seemed to correspond with the article produced. The house-breaking being clearly proved, and the goods, as it was thought, distinctly traced, the proof was about to be closed for the prosecutor, when it occurred to one of the Jury to desire the girl to put on the gown. This appeared rather a whimsical proposal, but was agreed to by the Court, when to the surprise of every one present, it turned out that the gown which the girl had sworn was hers, which corresponded with her description, and which she said she had used only a short time before, would not fit her person. She then examined it more minutely, and, at length, said, it was not her gown, though it very much resembled it. The prisoner was acquitted, and it turned out, afterwards, that the gown produced belonged to another woman, whose house had been broken into about the same period, by the same person, but of which no evidence had at that time been obtained*.

* Any reader wishing to pursue this inquiry will find several curious particulars in Howell's State Trials, vol. xxviii. Trial of Byrne, vol. xix; trial of Stewart, vol. xvi., p. 650, vol. xvii., p. 1430, vol. xviii., p. 1230; Gentleman's Magazine for October, 1772; Gent. Mag. for 1754, p. 404, for 1749, pp. 139, 185, 291,

In the case of Elizabeth Canning, thirty-six witnesses spoke to the identity of a gypsey woman of the name of Squires, and traced her all the way from Dorsetshire to London; whilst twenty-seven spoke to seeing her nearly every day during the same time, in the immediate neighbourhood of Enfield, ten miles from London: and yet she was so remarkable a woman, that it was said of her, God Almighty had not created her likeness.

At the trial of the Earl of Somerset, his burning of his answers to Lord Northampton's letters is an auxiliary fact on which a cogent presumption may be built of his participation in the principal fact, the poisoning of Sir T. Overbury.

The destruction and fabrication of evidence have usually been considered to warrant an inference of guilty consciousness. The kidnapping of the heir, in the Anglesea case, and the fabrication of the letters of a physician relative to a supposed birth, in the Douglas Peerage case, were strongly relied upon as affording presumptions to the prejudice of the parties to whom these acts were imputed.

In Lord Melville's case, Sir Samuel Romilly thus for 1751, pp. 377, 378; case of Jane Perry, in Howell's Medulla, p. 232; Harl. Misc., vol. vii., p. 86; the Author's Lectures, in the Legal Examiner, on the *alibis* adduced upon the Nottingham Special Commission; and on Personal Identity, in vol. viii. of the Medical Gazette. Nine remarkable cases of circumstantial evidence detailed in Chambers's Miscellany, vol. iv.

expresses the relevancy and force of presumptions of this nature. After commenting on the circumstance that Lord Melville had deliberately destroyed some vouchers of importance, Sir Samuel Romilly cites the various civil cases regarding inferences drawn from the destruction of evidence, and he then proceeds: "I have hitherto only stated to your Lordships civil cases; but, my Lords, I am sure that no case occurs of any person convicted of an offence upon circumstantial evidence, in which the Court does not act upon presumptions exactly of the same kind. I will put a case to your Lordships; I do not know exactly whether it has occurred, but it may have occurred; and that the decision would be such as that which I am about to state to your Lordships, I think there can be no doubt. I would suppose that a man were indicted for the murder of another, and that there were no evidence against him but that which is called circumstantial evidence, that is, evidence of conduct or of circumstances, which cannot be accounted for upon any hypothesis but that of the party being guilty. I will suppose a case of that kind, and then I will ask your Lordships, if evidence were to be produced that the person had destroyed the clothes which he wore upon the day on which the man was murdered, whether a jury would not be directed to presume, or whether a jury would not presume, that the clothes so destroyed had been stained with the

blood of the man that was murdered, and that they had been destroyed only for the purpose of suppressing that evidence? If a jury would not be expressly directed to presume guilt from this, I would ask, whether the party's having destroyed the clothes he wore upon the day on which the man was murdered, would not be considered as most material evidence in such a case."

On the other hand, reference may be made to a chapter in Mr. Bentham's *Rationale of Judicial Evidence*, in which he treats on "The Suppression or Fabrication of Evidence as affording proof of delinquency." In this chapter he makes valuable suggestions concerning what he calls "infirmative counter-probabilities that weaken presumptions of criminality." In drawing an inference of guilt in any case, it is important to inquire whether any infirmative counter-probabilities can be suggested? and, if any, what weight is due to them respectively?

If the Earl of Somerset did burn the papers, and, according to the printed report, he acknowledges it, he might, nevertheless, have done so because they contained matter relative to an intrigue with Spain, in which Northampton and Somerset were suspected to be implicated; or he might have been actuated by injudicious fears, lest expressions inimical to Overbury, though not indicating any design of murdering him, might afterwards be made a handle of. It is an important

counter-probability of an infirmative character, that the Earl of Somerset's letters had, after Lord Northampton's death, passed through the hands of the Lord Treasurer and of Sir R. Cotton, neither of whom were questioned whether they saw their contents, or, if questioned, their answers were suppressed.

Besides presumptions which peers or jurymen may draw by their own reasoning, there are certain *presumptions of law*. They have, for the most part, been taken out of the province of juries by the gradual encroachments of judges. In the present day, presumptions of law chiefly consist of rules of great practical convenience in the business of courts. They were anciently more numerous, and were liable to many objections on account of their injustice and inexpediency. Several ancient presumptions of law have been gradually abolished by the same power which created them, viz., the judges; as, for example, the presumption of legitimacy from a husband of an adultress residing within the four seas of England. Other legal presumptions have been transferred to the statute law, as recently a long catalogue of them relative to the effect of twenty years' enjoyment of property.

Mr. Bentham considers that most presumptions of law have been established in consequence "of an imperfect body of circumstantial evidence being set down as conclusive, for want of due attention to supposable infirmative facts," and he

endeavours to show that, in some instances of legal presumptions, if the exculpative suppositions be compared with those that are criminative, the probabilities are two to one against the conclusion of law. It may be observed, however, that presumptions of law have been sometimes passed with a view to conveniency of business, by adopting an ordinary probability for *prima facie* proof; sometimes for the sake of certainty, in matters where it is desirable to avoid litigation, and where it is difficult to arrive at a satisfactory conclusion by evidence; and, sometimes, it is to be feared, that anciently, presumptions of law were passed by Judges, with a view to insure the convictions of persons whom Juries might be apt to acquit.

Foreign Codes contain many more presumptions of law than those recognized by the English Courts. Thus the long inquiry which engaged the attention of the House of Lords, whether Lady Gardiner could have been with child by Lord Gardiner, from the 30th of January, 1802, till the 8th of December, would have been cut short by the presumptions of law contained in the Code Napoleon; and the Frederican Code.

In like manner, where the title to an estate depended on the survivorship of General Stanwix or his daughter, who were both lost in a vessel from which no person escaped; or where a title to dower claimed by the widow of a person hanged from the same cart with his mother depended on the sur-

vivorship of the husband, English Courts of Justice have experienced much perplexity*. And if questions could often arise, in our Courts, like that which occurred in France, of the survivorship of three persons, viz., a father and son killed at the battle of Dunes, near Dunkirk, in 1658, and on a same day and hour a daughter and sister becoming civilly dead by taking the veil, we might wish that, as in several foreign countries, presumptions of law had been framed in England to settle disputed questions of survivorship.

The Earl of Somerset received great prejudice at his trial in consequence of presumptions of law which have been since repudiated by the Courts as incompatible with justice. Sir Francis Bacon, in his opening speech, tells the Peers, "That which your Lordships are to try, is not the act of empoisonment, for that is done to your hands;—*all the world by law is concluded to say that Overbury was poisoned by Weston.*" In this way, the part of the case against the Earl of Somerset, which regarded the poisoning of Sir T. Overbury, was to be established by an incontrovertible presumption of law, founded on the record of Weston's conviction. Such a position seems contrary to the first principles of justice, and is at variance with the rules of evidence established at the present day, regarding the admissibility of

* See the author's Lectures on Survivorship, vol. viii., Medical Gazette.

proof by means of verdicts and judgments. These rules do not allow persons to be thus prejudiced by legal proceedings to which they have been no parties[†].

The Earl of Somerset might justly have answered Sir F. Bacon thus :—“ If I had been allowed to take a part in Weston’s trial, I would have asked questions of the witnesses, and I would have made such observations on their credibility, and on the inferences to be drawn from their testimony, as might have induced the Jury to find that Weston had not murdered Overbury. Am I to suffer from Weston’s neglect or incapacity to defend himself? are the *Peers* who try me to be biassed by the opinion of a *Jury* upon a different case from that which I am now able to present, and which I would have presented on Weston’s trial, had I been permitted to come forward on that occasion, instead of being confined in prison, and kept in entire ignorance of that transaction?”

* The first case in which much consideration was given to the principles on which verdicts or judgments ought to be received or rejected as evidence in subsequent judicial proceedings, was the trial of the Duchess of Kingston, in the reign of George the Third, for bigamy, in which it was attempted on the part of the prisoner, to prove the nullity of her first marriage by the production of a sentence in a suit of jactitation of marriage, according to which that marriage had been treated as invalid. Howell’s St. Tr. The proof of the fact of a conviction is not at this day *admissible evidence* of the guilt of the convict against any other person charged with being connected with him in crime. It is *res enter alios acta*. R. v. Turner, Moody’s Crown Cases, p. 348.

Serjeant Montague carried this doctrine of presumptions of law founded on verdicts of Juries further than Sir F. Bacon; for he says, "Four Juries have found this white powder was poison, and of this poison Sir T. Overbury died." This is the same Serjeant Montague who told the Peers that upon an indictment stating particular poisons, the accused might be found guilty of causing death by any other poison, though not specified. And yet he here lays down the law, that Weston's indictment might be used, on four different occasions, to prove that Sir T. Overbury died from Rosealgar, or from arsenic, or from mercury in tarts, or from mercury in a clyster; although Weston's Jury might have disbelieved that any of these poisons had been administered, and nevertheless might have found the verdict they did. The four Juries found merely that Sir T. Overbury died of some kind of poison, but it could no more be inferred from their verdicts that this was white arsenic administered three months before Sir T. Overbury's death, according to averments contained in the four indictments, than that it was any other kind of poison to be found in the pages of the pharmacopeia.

Another example of the way in which state prisoners were at this period borne down by presumptions of law, occurred at Sir W. Raleigh's trial. Sir E. Coke there lays it down, that "the law presumes a man will not accuse himself to accuse

another." And, Serjeant Philips, at the same trial, quotes, in Latin, another presumption of law, which is by no means universally true as a presumption of fact, that a person in expectation of death is always to be implicitly believed: "*nemo moriturus presumitur mentiri.*" Sir E. Coke's position amounts to this, that an accomplice is a witness superior to all exception; whereas, in the present day, it is not usual for Courts to rely on the evidence of accomplices, unless their testimony is confirmed in some material matter, by other proof.

The testimony delivered at the Earl of Somerset's trial, chiefly consists of hearsay evidence. Some explanation, therefore, of the nature of this kind of evidence, upon which subject there is much mis-apprehension, as well as some notice of the objections to its admission, seems requisite in this place.

First, then, hearsay evidence includes evidence of what persons have written, as well as what they have been heard to say. Thus the testimony of Davis concerning the contents of those letters of Overbury, which had never been seen by the Earl of Somerset, were equally of the nature of *hearsay*, as what the same witness related concerning Overbury's having stated that the Earl dissuaded him from accepting the post of Ambassador.

Secondly, what a person has said or written, may be in the nature of an *act* material to the subject of

inquiry; in which case, it is not, legally speaking, hearsay evidence. The speech or writing is not proved for the purpose of establishing that any statement contained in them is true; nor is credit given to any relation made by an absent party. Thus the Countess of Somerset's persuasions to Sir D. Woodes to assassinate Overbury, and her letter to the Lieutenant of the Tower, giving directions about the poisoned tarts, (with the exception of a single passage in it, which will be presently noticed,) were in the nature of acts done, or of contemporaneous explanations of acts by the party doing them, in which the veracity of the Countess as a narrator of bye-gone facts was not in question.*

It is to be observed, however, that although what has been spoken by a person may, under the circumstances adverted to, not be in the nature of hearsay evidence, yet it is so capable of wilful misrepresentation, and so liable to innocent mistake, and may be so varied in consequence of forgetfulness, as that proof of it ought to be received with the utmost caution. This caution is necessary in estimating oral evidence on every occasion. Sir

* For the same reason, the reading of the Countess's letter does not seem an infringement of the rule which excludes the testimony of a wife from being used against her husband. This point was much canvassed on Sir J. Fenwick's trial in the reign of William the Third, with regard to Lady Fenwick having withdrawn a witness of the name of Goodman from giving evidence against her husband, what she said not being in the nature of a narrative, but of an act done. Howell's St. Tr., vol. xiii.

M. Foster observes of "treasonable words," that "they are always liable to great misconstruction from the ignorance or inattention of the hearers, and too often from a motive truly criminal*." It will be thought by persons conversant with Courts of Justice, that children give more accurate testimony, in many instances, than grown persons. To them it is matter of interest to pay particular attention to the precise words which people utter in their presence. They are usually passive recipients of other persons, ideas and expressions, whereas a grown person, when he hears a statement, is apt to content himself with the substance of it, and to modify it in his own mind; and may be afterwards unable to trace back his ideas to their original impressions.

Where statements proved to have been spoken or written are in the nature of a relation of something which it is the object of evidence to establish, the objections to their admissibility are the following: First, The speaker or writer should himself be produced, in order that he may be interro-

* The author has before him the depositions of two unexceptionable witnesses, taken by him as a magistrate, on the day of writing the text, with regard to the charge of arson, at Lily, in Hertfordshire, where a person was accused of burning his own house in spite for being distrained upon. One of the witnesses speaks positively to hearing the accused say, "I've done the blasted rogues this time." The other as positively asserts that the words were, "The bloody rogues are done this time, I think." Both the witnesses were produced on the part of the prosecution, and had their feelings enlisted on that side.

gated as to his means of information, and other circumstances affecting the credibility of his narrative, and that his deportment under cross-examination in open Court may be observed. And, secondly, what was said or written, not being delivered under the religious and penal guarantees of an oath, nor according to the solemnities of a Court of Justice, it cannot be entitled to weight in a judicial investigation.

In estimating the validity of these objections, we must take into consideration the motives for falsifying judicial evidence, and the very limited means for detecting such falsehood at the moment by those tribunals to which the constitution entrusts the determination of questions of fact. Regard must also be had to the education of persons of whom those tribunals are ordinarily composed, and for the shortness of time allowed them for estimating the weight of evidence. It must be considered that hearsay evidence will often tend to an indefinite extent, will produce a multitude of collateral questions, and will always require very nice discrimination in those who are to decide upon it.

It is remarkable that Sir F. Bacon, not only at the trial of the Earl of Somerset, but also in a letter to the King, lays particular stress on the statement of a witness of the name of Simcox, that Weston *told* him that the Earl of Somerset *told* Weston, that "if Sir T. Overbury came out

of prison one of the two must die." Is it to be supposed that Sir F. Bacon really thought that such a hearsay statement as this ought to be presented as a leading feature of a public accusation, and be pressed, without comment, on the consciences of the Peers, or did he wish to delude them, or to afford them a pretext for condemning a political opponent?

This Simcox did not present himself to the Court as entitled to credit in point of character. He represented himself as "an ancient and familiar friend of Weston," who had been hanged for murder. He was allowed to depose to another fact that was very important if true, but which also depended on the hearsay of Weston, viz., that Weston *told* him that he had received gold from the Earl of Somerset. It is material to observe that of the various matters which Simcox deposed that he had heard from Weston, Weston, in his numerous and circumstantial examinations, does not give the slightest confirmation.

One expression in the Countess's letter to the Lieutenant of the Tower is of the hearsay character we are now considering, viz., "I was bid to, &c." It is by no means clear that the Countess meant by the expression the Earl of Somerset, to whom she was not married at the time the letter was written. But supposing the Countess had stated "Lord Rochester bid me," would the evi-

dence have amounted to more than this, that she had made a relation of what the Earl of Somerset had said, but under none of those sanctions which guarantee the credibility of testimony delivered in Courts of Justice.

The following examination of Franklin is a flagrant specimen of the worst kind of hearsay evidence. His confession was read, in which it was stated that, "In a letter which my Lady *told* him was sent her from her Lord, there were these words, 'he wondered things were not yet despatched,' and that one day the Countess *told* him she had that day received a letter from Lord Rochester, 'that if Weston did not presently despatch, Sir T. Overbury would be out.' " In this statement we are called upon to believe, first, that Franklin's alleged confession was a true relation of what he had said; secondly, that he had spoken truly of what the Countess had said; and thirdly, that the Countess had faithfully related to Franklin the contents of a letter written by the Earl. None of these statements were made in a Court of Justice or under the sanction of an oath, nor were any of the narrators confronted with the prisoner: moreover, two of these persons on whose credibility the above statements rested, had been executed for murder.

To point out all the matters attempted to be proved by hearsay evidence would be to repeat

the greater part of the trial*. But it may be observed that the depositions and confessions which are the subject of the foregoing remarks were themselves of a hearsay character. This objection is independent of that which applies to the contents of those depositions and confessions referring to statements made by other persons not confronted with the prisoner whose life was to depend on the narratives of their narratives.

Sir F. Bacon, indeed, at the commencement of the Earl of Somerset's trial, says, "Those examinations that have been taken on oath shall be read; and the witnesses also I have caused to be here, that they may be sworn, and to justify and deny what they hear read, and to diminish and add to their examinations: and besides that, my Lord of Somerset, and you my Lords, the Peers, may ask them what further questions you please." But when the Earl of Somerset says, "I could wish that Sir R. Cotton (whose examination had been read,) were here to clear many things which now be obscure," he is answered, "If he were here, he could not be sworn for reason of

* See other parts of Simcox's evidence. Franklin's hearsay evidence of white arsenic being sent to the Tower, and the Countess's declaration to him of her motives for poisoning Overbury. Sir D. Digges's statement of what Sir R. Mansell told him was contained in a letter. Davis's account of what Weston told him had been the effects of the white arsenic; Weston's conversations with the Countess, &c.

State, being held for a delinquent." Besides the testimony being chiefly of a hearsay character, the prisoner would be solicitous to interrogate the persons whose words or letters were quoted, rather than those who only professed to relate what others had said or written, and who disclaimed any knowledge of their own upon the subjects referred to in the discourses or letters.

But the illusory nature of the boon held forth by Sir F. Bacon will appear in the most striking manner, when it is considered that the confessions of Franklin, Weston, and Sir G. Helwysse contained the most criminating portion of the evidence adduced against the Earl of Somerset, and these persons had all been hanged before the trial.

The unrestricted manner in which hearsay evidence was formerly admitted upon trials, of itself goes far to destroy all confidence in the decisions of ancient tribunals. A few examples will suffice to show the nature of hearsay evidence, which, for the most part, is as unsatisfactory to the philosopher in his study, as it is mischievous in Courts of Justice.

On Sir W. Raleigh's trial, a witness, of the name of Dyer, deposed as follows:—"I came to a merchant's house in Lisbon, to see a boy that I had there; there came a *gentleman* into the house, and, inquiring what countryman I was, I said an Englishman; whereupon he asked me if the King

was crowned? and I answered, No, but that I hoped he should be so shortly. Nay, said he, he shall never be crowned; for Don Raleigh and Don Cobham will cut his throat, ere that day come."

Raleigh. What infer you upon this?

Sir E. Coke. That your treason hath wings.

In like manner, at the same trial, a witness of the name of Copley deposes, that "Watson *told* me that a special person *told* him that Aremberg *offered* to him 1000 crowns, and that Brook *said* that the story in Scotland came out of Raleigh's head."

So a witness, at the trial of Lord Stafford for the Popish Plot, says, "I went to one Mr. Singleton, a priest, and he *told* me, that he would make no more to stab forty parliament men, than eat his dinner, which he was doing at that very time." Another witness, at the same trial, being asked about the assistance given by the Pope for the carrying on of the Popish Plot, says, "I *heard* the Pope had out of his revenue promised several sums of money for the carrying on of the plot, and particularly that he would assist the poor distressed Irish with both men and money, and there should not be anything wanting on his part."

Lord Stafford. I desire to ask him *what* sums of money did the Pope contribute?

Dugdale. I have heard of *several* sums *in general*.

Lord Stafford. Did you hear of any sum certain?

Dugdale. I do not know, but I think I heard sometimes of 10,000*l.*, or some such sum."

At the trial of Hulet, the regicide, Colonel Nelson deposed as follows:—"Upon a discourse with Colonel Axtell, about six years since, in many other discourses, we fell to discourse about the late King. I, supposing that he had been acquainted with that affair, desired him to tell me the names of those two persons disguised upon the scaffold. He told me I knew the persons as well as himself; saith he, they have been upon service with you many a time. Pray, Sir, said I, let me know their names? Truly, said he, we would not employ persons of low spirits that we did not know, and therefore we picked upon two stout fellows. Who were those? said I. It was Walker and Hulet; they were both serjeants in Kent when you were there, and stout men. Who gave the blow? said I. *Saith he*, poor Walker, and *Hulet took up the head*. Pray, said I, what reward had they? I am not certain whether they had thirty pounds a-piece, or thirty pounds between them.

Hulet. Pray let Mr. Axtell speak to this, he is hard by." Notwithstanding Axtell was "hard by," and a state prisoner, it was not permitted to Hulet to interrogate him about a conversation put into his mouth, and which was to send the prisoner

at the bar to the gallows. It is remarkable that the next witness, Colonel Tomlinson, gave evidence that he was *told by Colonel Pretty*, then in Ireland, *that Hulet struck the blow*. On the other hand, several witnesses deposed that Gregory Brandon (the predecessor of Jack Ketch) then deceased, acknowledged to them that it was he who cut off King Charles's head.

A striking illustration of the uncertainty of hearsay testimony in which two witnesses say that they knew the same identical facts by hearsay, the one of the other, occurs at the trial of Algernon Sidney. The circumstance is mentioned by Bishop Burnet, in his History.

West deposed at Algernon Sidney's trial as follows:—

Mr. North. Give an account of what you know of the plot.

West. *Colonel Rumsey*, about Christmas, *said* there were some Lords and gentlemen intended to make an insurrection; the persons were the Duke of Monmouth, my Lord Essex, my Lord Howard, my Lord Russell, the prisoner at the bar, and Mr. Hampden. After some time he *told* me they had altered their measures; and were resolved not to venture upon an insurrection in England till they had a concurrency in Scotland. Afterwards, I was not privy to anything else, but what I had the report of from Mr. Nelthrop and Mr. Ferguson; Mr. Nelthrop *told* me the prisoner *said*.

Sidney. My Lord, I am very unwilling to interrupt the gentleman —

Lord C. J. You must not interrupt the witness. Go on, Sir.

Afterwards, at the same trial, Colonel Rumsey deposed as follows :

Mr. West told me that there was a council, which were the Duke of Monmouth, my Lord Essex, my Lord Howard, Col. Sidney, Mr. Hampden, and my Lord Russell, there were six.

Lord C. J. What did he tell you of the six ?

Rumsey. *He told* me they were managing a business in Scotland.

Lord C. J. A business, pray speak plain.

Rumsey. For the insurrection.

Lord C. J. Say so then, we know nothing of the business you were about.

Rumsey. Mr. West had that discourse with my Lord Howard; I never had; he is more fit to speak to that than me.

It is difficult to conceive how Peers, Juries, the public, the Judges themselves should not have been moved by the earnest supplications of accused persons, that the witnesses whose testimony affected their lives might be confronted with them. Thus the Duke of Norfolk, in the reign of Queen Elizabeth, says, at his trial, "I pray you let the witnesses be brought face to face to me. I have often required it: and the law, I trust, is so." To which he is answered, "The law was so for a time, but since the law hath been found too hard and dangerous for the peace, and it hath been repealed."

Sir W. Raleigh, upon Lord Cobham's examination being read, which was the principal evidence

adduced against him, says, "I beseech you, my Lords, let Cobham be sent for, charge him on his soul, on his allegiance to the King, if he affirm it, I am guilty."

Raleigh. The common trial of England is by a jury and witnesses.

Ld. Ch. J. No: by examination.

Raleigh. When the accuser is not to be had conveniently, I agree with you, but here my accuser may. He is alive, and in the house.

Ld. Ch. J. There must not such a gap be opened for the destruction of the King, as there would be, if we were to grant this. You plead hard for yourself, but the laws plead as hard for the King.

Chief Justice Popham, in passing sentence on Sir W. Raleigh, mentions a reason for refusing permission that Lord Cobham might be brought into Court, which, he says, did not occur to him when the request was made. "It now comes into my mind why you may not have your accuser come face to face. For such an one is easily brought to retract when he seeth there is no hope of his own life. It is dangerous that any parties should have access to a conference with one another; when they see themselves must die, they will think it best to have their fellow live, that he may commit the like treason again, and so in some sort seek revenge."

Shakspeare, writing only a few years before the Earl of Somerset's trial, in his play of Henry VIII.,

intimates that the popular feeling sympathized with prisoners who desired their accusers to be confronted with them.

The great Duke
 Came to the bar; where to his accusations
 He pleaded still, not guilty, and alleg'd
 Many sharp reasons to defeat the law :
 The King's attorney, on the contrary,
 Urged on the examinations, proofs, confessions
 Of divers witnesses ; which the Duke desir'd
 To him brought, *vivâ voce*, face to face.

The practice of reading the depositions of absent witnesses disappeared during the Commonwealth, and was not revived after the Restoration, even at the revengeful trials of the regicides, or the sanguinary persecutions of the popish plot. The verdict of the jury which acquitted Lilburne, is said, by Clarendon, to have occasioned more regret to Cromwell, than "the loss of a battle," and yet all the witnesses produced at the trial were sworn and examined in open court*.

Burke, in his "Letter to a Member of the National Assembly," observes, that "Cromwell well

* A medal struck on the occasion of Lilburn's acquittal contains the names of his jury, with a motto "saved by the power of the Lord and the integrity of His jury, who are judges of law as well as of fact." In reference to this acquittal, Sir J. Macintosh addresses the Jury on Peltier's trial: "If any modern tyrant were, in the drunkenness of his insolence to hope to overawe an English Jury, I trust and believe that they would tell him, 'Our ancestors braved the bayonets of Cromwell, we bid defiance to yours.'" *Contempsit Catilinæ gladios, non pertimescam tuos.*

knew how to separate the institutions expedient to his usurpation from the administration of the public justice of the country; and that, accordingly, he sought out with great solicitude and selection, and even from the party most opposite to his designs, men of weight and decision of character, men unstained with the violence of the times, and with hands not fouled with confiscation and sacrilege."

Is this country then indebted to Cromwell, and the judicial functionaries of his choice, such as Hale, Windham, Whitelocke, Rolle, and Atkins, for effecting important reforms in the administration of criminal justice, indispensable for the vindication of innocence? Or rather, should we not ascribe these reforms to the love of truth, the sentiment of impartiality, the feelings of sympathy for the oppressed, which are implanted in the human heart? For a period these dictates of nature were silenced and suppressed and outraged, through the excessive power of the Tudor and Stuart princes. The convulsions of a national revolution followed; which were, indeed, only the effects of a *vis medicatrix*, required for casting off political distempers of long continuance and great malignity. Among the proofs of a natural tendency of human affairs to reform, though sometimes unavoidably by violent means, inveterate deviations from the cause of truth, and justice, and humanity, may be cited, the improvements in English judicial proceedings, effected during the Commonwealth. Among these

one of the most important is that of an accused person being entitled to have his accusers brought before him face to face.

Objections of a similar nature to those which apply to hearsay evidence, are applicable also to that which is *secondary*. Secondary evidence is that of the contents of written papers, (not necessarily, as in hearsay, of a narrative tenor,) which are not produced, and of which the non-production is not satisfactorily accounted for. This kind of evidence is excluded on the principles, first, that, unless there was an intention to deceive, the original evidence would be produced; and, secondly, without presuming a fraudulent intention, that much risk of error is avoided by drawing truth from its fountain-head*.

Sir Gervase Helwysse's fate was sealed by a statement in the confession of Franklin, regarding a passage in a letter said to have been written by Franklin to the Countess of Somerset. No inquiry appears to have been made after the original letter. In like manner much reliance was placed on what Franklin said that the Countess had read to him from a letter of the Earl, which he had written to

* This subject was very much considered upon the Queen's trial. Among other rulings, it was held, that it is not allowable on cross-examination to represent the contents of a letter, and then to ask a witness whether he wrote a letter to any person with such contents? And even if a witness acknowledge a letter to be his handwriting, he cannot be questioned as to its contents, but the whole letter must be read in evidence.

her before their marriage. There was no evidence of the Earl having burnt *this* letter. The important letter from the Countess to the Governor of the Tower, about the poisoned tarts, does not appear to have been proved by the handwriting, and it is probable that only a copy was produced at the trial. It is also left obscure in what way the draft of pardon, said to have been prepared by Sir R. Cotton, was proved. In the two reports of the trial the contents of the pardon are related differently; but neither report professes to give a verbatim copy of it. Great but ineffectual pains have been taken in searching various repositories of public papers, for the original draft of pardon, and letter of the Countess.

Lord Tenterden expressed himself in the following terms on the subject of secondary evidence. "I have always acted most strictly on the rule, that what is in writing, shall only be proved by the writing itself. My experience has taught me the extreme danger of relying on the recollection of witnesses, however honest, as to the contents of written instruments."

The State Trials afford excellent lessons for the study of the rules of Evidence. For every deviation from sound principles on this subject is illustrated by such enormous examples, as to expose, by a kind of magnifying power, those evil consequences which are faintly imagined in perusing

abstract treatises. The kind of testimony which would engross the time of our tribunals, if secondary evidence were admissible, and which used to perplex and mislead Peers and Jurymen in former times, may be judged of by reading the statements of the witnesses in the trials for the Popish Plot.

The contents of a multitude of letters extending over a long space of time, and said to have been seen by the witnesses at Madrid, at Valladolid, at Paris, at St. Omer, and various other parts of the world are given from recollection with great apparent particularity; the witnesses not having taken a note of any part of the letters at the times of reading, and not having read them for a number of years; whilst not one of the supposed letters is produced, nor a copy, nor even an extract. A few specimens of the secondary evidence admitted on the trials for the Popish Plot, will sufficiently illustrate its very unsatisfactory and mischievous qualities.

At Sir G. Wakeman's trial, the notorious Oates deposed to having seen, but not in the possession of the prisoner, a day-book, (the supposed original of which had not been searched for in order to be produced at the trial,) under a date which he said he could not recollect, an entry of this nature, touching a bribe to Sir G. Wakeman for poisoning the King. "This day there was proposed £15,000

to Sir G. Wakeman, and by him accepted;" and, he said, that there was written underneath this entry, in Sir G. Wakeman's handwriting :

"Received £5000 in part of this £15,000.

(Signed) GEORGE WAKEMAN."

At Whitbread's trial for the Popish Plot, Dugdale swore that he had intercepted many letters from Papists for the introducing of Popery and killing the King.

Lord Ch. J. How many letters have you intercepted? Have you intercepted twenty?

Dugdale. Yes, a hundred, my Lord.

At the trial of the Popish Lords, Oates deposed that he saw patents under the seal of the Father General of the Jesuits, appointing Lord Arundel Lord High Chancellor of England, Lord Powys to be Lord Treasurer, Lord Petrie to be Lieutenant-General, Mr. Coleman to be Secretary of State; and that in May, June, July, and August last, he saw several letters signed Stafford, "whereby *it appeared* that Lord Stafford was in a conspiracy against His Majesty, and that he had transmitted several sums of money to the Jesuits to carry on the design."

The trials for the Popish Plot may serve as a salutary beacon to indicate the imbecility of human reason and virtuous intentions, if the mind be swayed by an excess of political or religious zeal: this is apparent on observing the worthless kind of evidence by dint of which innocent men were hurried to the scaffold, at the instigation of some

of the most wise and upright characters that adorn our National history. Whilst in the progress made in enlightened principles of Jurisprudence, since the days when hearsay and secondary evidence were admitted without objection, we may recognize a manifest accession of security for property, liberty, and life in England.

According to the present practice of Courts, the proof of what a prisoner has confessed, is deemed an exception to the rule which excludes hearsay evidence. This exception is allowed on the principle, that the improbability of a person accusing himself untruly, is as strong a guarantee of credibility as any oaths, examinations, or other tests. The modern practice, however, requires that a confession, in order to be receivable in evidence, ought to have been made in the absence of any inducement either of hope or of fear.

It has been thought, by some Jurists, that instead of excluding confessions upon the ground of the inducements under which they were made, it would be expedient to leave it to Juries to consider the effect of particular temptations of hope or fear, in diminishing the credit due to confessions in each individual case. On the other hand, it may be observed, that the circumstances of Jury trials are not favourable to the exercise of that nice discrimination (even supposing the Jury to be capable of it in a high degree,) which is required for making deductions from the weight of positive testimony; and, moreover, many objectionable courses in the

treatment of prisoners, with a view to elicit confessions from them, are checked by the existing practice. It may be considered, also, that verbal confessions are very apt to be misrepresented, both unintentionally and wilfully, according to the feelings and wishes of the witness hearing and repeating them. Nevertheless, it would seem, that in the present day, confessions are often excluded upon frivolous grounds; and that the maxim, "No one is bound to accuse himself," is, in England, allowed an inconvenient latitude of operation, which affects prejudicially the interests of truth and justice.

However, where a prisoner has made a confession, upon temptations of pardon being held out, or after threats or personal violence, these circumstances undoubtedly diminish the credit which might otherwise be due to his disclosures; for experience will justify us in believing that it is not improbable that a prisoner might, when so urged, accuse himself untruly.

We know, from Sir F. Bacon's letters, that King James and himself racked their inventions for artful devices, by means of which the Earl and Countess of Somerset might be induced to make confessions, under the hopes of pardon and royal favour: divines, high officers of state, secret messengers at midnight, were employed for this purpose; and yet, examinations, taken under these circumstances, were read at the Earl's trial, as if

their credibility was not at all affected by the artifices employed to obtain them.

A confession made by a prisoner, is not, according to present rules, allowed to be received in evidence, for the purpose of criminating any one but himself. This principle of English law was established by a resolution of Judges in *Tong's* case, early in the reign of Charles II.; and, like the rule requiring witnesses to be examined in open Court, appears to have been one of the judicial reforms owing their origin to the Commonwealth.

At the trial of Count Coningsmark, in the reign of Charles II., for the murder of Mr. Thynn*, a transaction which is represented on Mr. Thynn's monument in Westminster Abbey, Chief Justice North would not allow the confession of the Pole who actually fired the blunderbuss at Mr. Thynn, to be read, because it implicated the Count; but he asked the Magistrates who took it, what the Pole had confessed concerning himself. When the author was first called to the bar, it was usual, in reading confessions to a Jury, to omit the names of any persons implicated in them. The practice has been changed, and confessions are now read entire; but Juries are cautioned not to allow confessions any weight, except as they affect the parties making them. It is believed, however, that Juries are not much influenced by cautions

* Howell's St. Tr., vol. ix.

regarding the legitimate bearing of evidence; for it requires a very discriminating judgment to listen to evidence for one purpose, but to pay no attention to it for another.

Sir E. Coke, as *Amicus Curiae*, upon the Earl of Somerset's trial, advances a different principle from that by which Courts are governed in the present day. He expressly maintains that, "where persons accuse themselves, their testimony is as strong as if upon oath," for the purpose of convicting others besides themselves. There can be no doubt that Sir E. Coke's reasoning is fallacious. For a person, although he may speak against his interest in confessing himself guilty of a crime, yet, after having made that confession, he may speak as decidedly in favour of his own interest, whilst he is implicating others with himself.

Thus, Franklin, the apothecary employed by the Countess of Somerset, might have supposed that he was extenuating his own guilt, (which had been deposed to by others before he made any confession himself,) by stating that he was led to furnish poisons most reluctantly, that he "prayed to be excused on his knees, but that the Countess was able to bewitch any man, had urged him *two hundred* times to bring the poisons," and had tempted him by large bribes. In like manner, the other criminals executed for Overbury's murder, who were sensible that their own guilt could be proved, whether they confessed it or not, might have sup-

posed, or it might even have been intimated to them, that they would have some chance of pardon, if they performed a gratifying service to the new Favourite, and perhaps the King himself, by implicating the Earl of Somerset.

With regard to Sir E. Coke's position, that self-accusation is a security for truth equivalent to an oath, it is to be observed, that Lonbell's and Sir R. Cotton's examinations were read against the Earl of Somerset, although it is expressly stated that they were not sworn, because they were suspected delinquents; and yet, in their examinations, they do not accuse themselves: so that Sir E. Coke's excuse for reading unsworn testimony against the Earl of Somerset, does not apply to all the unsworn examinations which were read, since several of them were not fortified by the test of self-accusation. Moreover, this excuse is obviously inapplicable to the mass of unsworn testimony brought forward at second and third hand, by way of the hearsay of persons never examined judicially, either with or without oath.

But some Jurists, as Mr. Bentham, do not approve of the swearing of witnesses in any case. Still it is invariably admitted, that false testimony should be guarded against by severe penalties. And at the time of the Earl of Somerset's trial, such penalties could only be inflicted in cases of perjury, where an oath was taken. The security of the religious sanction of taking God to witness,

may be thought to operate beneficially in some instances, perhaps not very small in number, where a deponent's conscience is not proof against temptations to bearing false witness against his neighbour, and yet is sufficiently tender to take alarm at the solemnity of an oath. In a variety of cases which may be suggested, especially if a rule prevail of requiring two witnesses to convict of perjury, a person about to take a false oath has nothing to dread from the penalties of human law. But whether the confessions of the murderers read at the Earl of Somerset's trial, or the examination of a person of Sir R. Cotton's high character, had been taken on oath, or without oath, it is conceived that the adoption or omission of such a formality would not have added to their credibility, or detracted from it one iota.

A much stronger objection to be urged against the use of confessions in the Earl of Somerset's case, arises from their not having been taken publicly, nor even in the presence of the accused.

The want of publicity in the manner of taking a confession is liable to much graver objections than those which apply to other hearsay testimony. In receiving a written deposition, indeed, not less than if it be a confession, unlimited confidence is demanded for the fidelity of the person recording it. By admitting either, the truth-inspiring awe of a public assembly, and the insight into the mind of a witness by observing his demeanour

whilst under examination, are abandoned. But there is a further and a most important inquiry to be made with regard to a confession, viz., the circumstances under which it was obtained.

If the Earl of Somerset had wished to know under what circumstances the confessions used against him had been made; whether promises of pardon had not been held out on condition of implicating himself? whether menaces, or the rack itself had not been employed in order to extort the confessions? he must have interrogated Sir Edward Coke, who alone could give information concerning these dungeon secrets.

The difficulty of discovering the truth of such clandestine practices may be illustrated from what occurred at the Duke of Norfolk's trial, in the reign of Queen Elizabeth. The Report of that trial states, "Mr. Treasurer, Sir Francis Knollis, and Mr. Chancellor of the Exchequer, Sir Walter Mildmay, being sworn, did testify that *Barker made all these confessions freely without compulsion*. Also Dr. Wilson, Master of the Requests, beings worn, did testify the same: and that Barker was never offered torture, nor was once in the prison where the rack was. But the Duke said Barker saw where his fellow Bannister had been." Now the reader will find in Murdin's State Papers a joint letter from the same Dr. Wilson and Sir T. Smith to Lord Burleigh, wherein they write "of Bannister with the rack, of *Barker with the*

extreme fear of it, we suppose we have gotten all." In a previous letter Lord Burleigh wrote to Sir T. Smith thus:—"Her Majesty will have you use some extremity with Barker, if he will not confess the truth, and will have you put him in fear of the torture, if he will not confess the truth voluntarily*."

In like manner, Sir W. Raleigh, at his trial, in reference to the examination of his servant Kemys, says: "I know not what you might draw from *myself* for fear of torture, for this poor man hath been a close prisoner these eighteen weeks, and hath been threatened with the rack to make him confess: but I dare stand upon it he will not say so now.

"*Commissioner.* We protest before God there was no such matter intended to our knowledge.

"*Sir W. Raleigh.* Was not the keeper of the rack sent for and he threatened with it?

"*Sir W. Wade* (Lieutenant of the Tower.) When Mr. Solicitor and myself examined Kemys, we *told him he deserved the rack*, but *did not threaten* him with it."

If the persons whose confessions were used against the Earl of Somerset were not actually placed on the rack, it is certain that they must have been fully aware that the rack was in the same or an adjoining chamber, and that their flesh

* Cotton MSS. Calig. c. iii., 254; Murdin's State Papers, p. 101; Jardine's Criminal Trials, vol. i., p. 194.

would be torn by it, upon a word being given by their Inquisitors, if, as Sir W. Wade expresses it, they “deserved” to be tortured. And they might very probably have heard the screams of fellow-prisoners who were stretched and agonized until, as Dr. Wilson and Sir T. Smith say, “all had been gotten from them.”

Sir E. Coke, at the Countess of Somerset’s arraignment, compliments King James on having devised a string of interrogatories, to be administered to the witnesses in the Overbury trials, and say encomiastically, that “none of them came empty away.” Are we not warranted in conjecturing that delusive promises, that threats, that excruciating torments, would be employed, rather than that the royal interrogatories should come back to St. James’s *empty*, and the framer of them be stultified and disappointed; for it is not uncharitable to suppose it probable, that Sir F. Bacon who tortured other delinquents, should also have tortured such as refused to answer what a king asked, and in a manner that a king wished.

With reference, in particular, to Weston’s examinations, Sir E. Coke takes pains to inform the Jury and the audience, that he used no threats or force to procure them. This lenity, however, is explained away by a circumstance which appeared at another trial, viz., that Sir Gervase Helwysse, who knew the disposition of his gaoler Weston, told Sir E. Coke, that the way to elicit from him all he knew,

was to adopt a soothing and wheedling course of examination; meaning that he was to be deluded by expectations, rather than daunted by threats. Sir E. Coke makes no such parade of lenity and humanity with reference to the confession of any other person than Weston.

Lord Essex, at his trial, makes a shrewd observation upon Sir E. Coke, the Attorney General, beseeching the Peers to note that the examinations "jumped together in each particular point, although the parties were all severally examined." Lord Essex says, "the self-same fear and the self-same examiner, may make these several examinations agree all in one, were they never so far distant."

Owing to the ancient manner of taking confessions, various accounts have been propagated regarding severities or artifices used for procuring them, which were calculated to throw a scandal on the administration of public justice: whether true or false how few could refute what was alleged to have occurred in a dungeon of the Tower; and of these, who would have credited their refutation? Sir A. Weldon relates that Lord Cobham, in consequence of whose confession Sir W. Raleigh was found guilty of high treason, protested to certain individuals whom he names, in these words: "That villain Waad (the Governor of the Tower) did often solicit me, and, not prevailing, got me, by a

trick, to write my name upon a piece of white paper, which I, thinking nothing, did, so that, if any charge came under my hand, it was forged by that villain Waad, by writing something above my hand, without my consent or knowledge."

Tresham, who died in the Tower, where he was imprisoned for the Gunpowder Plot, had made a confession implicating Father Garnet. A few days before his death he dictated to his servant Vava-seur a statement, wherein he declares that he accused Garnet only "to avoid ill-usage," and then states, "upon his salvation," that what he had said concerning Garnet was more than he knew. This paper Tresham signed in the presence of two witnesses. Two or three hours only before he died, he called for it, and giving it to his wife, charged her to "deliver it with her own hands to the Earl of Salisbury." This document is now in the State Paper Office. Like many other dying declarations, it may have been untrue: Mr. Jardine inclines to think it was so, at least in some particulars. But the administration of justice in a country, in order to be respected, and to inspire a general feeling of security, ought to be conducted with such publicity that the excuse of making a false accusation, because it was to "avoid ill usage," may, if untrue, be exposed to universal discredit and contempt.

So early as the reign of Henry VI. Chancellor

Fortescue wrote an admirable chapter, in his treatise "*De laudibus legum Angliæ**," against the practice of torture. Addressing the unfortunate young Prince of the House of Lancaster, for whose use, in order to divert him from being exclusively addicted to military pursuits, his book is written, he says, "Do you not remember, my Prince, a criminal, who, when on the rack, impeached of treason a certain noble Knight, a man of worth and loyalty, and declared that they were both concerned together in the same conspiracy; and, being taken down from the rack, he still persisted in the accusation, lest he should again be put to the question. Nevertheless that he was brought almost to the point of death, after he had the viaticum and sacraments administered to him, he then confessed, and took a very solemn oath upon it, by the body of Christ, and as he was now in the bitterness of death, when all hopes of recovery were over, he affirmed that the said worthy Knight was innocent and clear of every thing he had laid to his charge. He added, that the tortures he

* The translation of 1775, in the author's edition of Fortescue, published in 1825, is used. There is a note by the author on the use of the torture in England, and the subject has been very ably treated by Mr. Jardine in a lecture on the subject, and also in his "*State Trials.*" See also, *Archæologia, Antiq. Soc.*, vol. x. Retrospective Review, No. xviii. from a MSS. of Sir S. Romilly. For a description of the rack, Strutt's *Antiq.* vol. iii., p. 46. For a defence of the use of torture, see the *Law of Laws*, by Sir R. Wiseman, published A.D. 1664.

had been put to were so intolerable, that, rather than suffer them over again, he would accuse the same person of the same crimes, nay, his own father." Fortescue observes, "Such confessions as these, alas! a great many others of those poor wretches make, not led by a regard to truth, but compelled to it by the exquisiteness of their torments: now what certainty can there arise from such extracted confessions?" He adds, "But suppose a person falsely accused should have so much courage, so much sense of a life after this, as amidst the terrors of this fiery trial (like the three young Jews recorded in Daniel) neither to dishonour God, nor lie to the damnation of his soul, so that the Judge should thereupon pronounce him innocent, does he not with that same breath pronounce himself guilty of that cruel punishment which he inflicted upon such person undeservedly?" "O Judge! in what school of humanity did you learn this custom of being present and assisting while the accused wretch is upon the rack?" "I see not how it is possible for the wound, which such a Judge must give his own conscience, ever to close up or be healed; as long, at least, as his memory serves him to reflect upon the bitter tortures so unjustly and inhumanly inflicted on the innocent."

The reader will be interested with a short specimen of Fortescue's original Latin, in which he expresses sentiments, in the reign of Henry VI.,

so far in advance of the judicial practices throughout the reigns of Henry VIII., Elizabeth, and James, if not also of Charles: "O! Judex! quibus in scholis didicisti te præsentem exhibere, dum pœnas luit Reus?" "Non enim per Angelos, sed per Dæmones exequi facit Dominus judicia sua, reddita in damnatos." "Credo quod vulnus, quo sauciatur animus Judicis pœnas hujusmodi infligentis nunquam in cicatricem veniet, maximè dum recolit acerbiter pœnarum miseri sic afflicti."

It is a remarkable circumstance, that Sir E. Coke, whose name is repeatedly found as a Commissioner to execute the barbarous practice of torture, or as a Privy Counsellor to direct it, refers, in his writings, to above-cited opinions of Fortescue, and declares that the infliction of torture is against Magna Charta, and, "that there is no one opinion in our books or judicial records for the maintenance of it,*" and that it "cannot be justified by any usage."

Sir T. Smith, who was a philosopher and a man

* 3 Inst. 85. On Lord Essex's trial, Sir E. Coke extols the clemency of Queen Elizabeth for not applying the torture to the accomplices and witnesses, upon which Sir M. Foster remarks "a strain of adulation, to say no worse of it, nauseous and sordid, highly unbecoming a gentleman of the profession: especially one who well knew that any kind of torture in that case would have been utterly illegal." Sir E. Coke, in his writings quotes the lines of Virgil with reference to this subject:—

"Gnossius hæc Rhadamanthus habet durissima regna
Castigatque, auditque reos, subigitque fateri."

of literature, writing in the reign of Edward VI., declares that torture is against the law of England, and that the practice savours too much of slavery for a free people: and yet it is curious that the warrant of Queen Elizabeth for applying the rack, in the case of the Duke of Norfolk, was directed to this same Sir T. Smith. It is due, however, to the character of this excellent man, to state his own expressions of disgust at being employed on such an odious commission. In a letter to Lord Burleigh on the subject, he "craves his revocation from this unpleasant and painful toil." He says, "I assure you, I would not wish to be one of Homer's Gods, if I thought I should be Minos, Æacus, or Rhadamanthus; I had rather be one of the least shades in the Elysian fields."

In the year 1628, the Judges delivered an unanimous opinion against the legality of torture in the case of Felton, who had stabbed the Duke of Buckingham. Laud, the Bishop of London, told Felton, when brought before the Council table, that if he would not confess he must go to the rack. To which Felton replied, "If it must be so, I cannot tell whom I may nominate in the extremity of torture; and, if what I shall say must then go for truth, I cannot tell whether his Lordship (meaning the Bishop of London,) or which of their Lordships he might name, for torture might draw unexpected things from him." Sir M. Forster, in his *Legal Discourses*, after

During this speech of Felton, observes, "Sound sense in the mouth of an enthusiast and a ruffian!"

Notwithstanding this formal opinion against the legality of torture, there is to be found in the State Paper Office, a warrant subsequently issued for applying torture to one Archer, in King Charles's reign, A.D. 1640. This appears to be the last record to be found of any infliction of torture in judicial proceedings in England*. The abolition of the use of the rack as well in practice, as by the voice of the law, may be regarded as another signal improvement in criminal justice coeval with the Commonwealth. These prison horrors, like those of the French Bastile, probably contributed to swell the torrent of popular resentment which overwhelmed the constituted authorities of the State, and brought a king to the scaffold; thereby verifying the aphorism of Lord Bacon, "*Morosa morum retentio res turbulenta est æquæ ac novitas.*"

The *Rack* was a large wooden frame, of oak, raised three feet from the ground: the prisoner was laid under it on his back upon the floor; his

* The warrant directs that "if, upon the sight of the rack, Archer does not make a clear answer, the commissioners are to cause him to be racked as in their discretions shall be thought fit." There is a passage which has escaped the notice of writers on the subject, in Tongue's trial, 14 Car. II., 6 Howell's St. Tr., wherein Tongue says, "I confess I did confess it in the Tower, being *threatened* with the rack."

wrists and ankles were attached by cords to two collars at the ends of the frame, these ends were moved by levers in opposite directions, till the body rose to the level of the frame; questions were then put, and if the answers did not prove satisfactory, the sufferer was stretched more and more, by the further elongation of the ends of the frame from each other, through means of the levers, until the bones started from their sockets.

The *Scavenger's Daughter*, another instrument of torture used in the Tower, was a broad hoop of iron, consisting of two parts fastened to each other by a hinge; it operated by pressure over the small of the back, and by force of the compression, soon caused the blood to flow from the nostrils.

The *Iron Gauntlets*, another kind of torture, served to compress the wrists and suspend the prisoner in the air from two distant points of a beam. "I felt," said F. Gerard, one of the sufferers by this kind of torture, "the chief pain in my breasts, belly, arms, and hands. I thought that all the blood in my body had run into my arms, and began to burst out at my finger ends. This was a mistake, but my arms swelled till the gauntlets were buried within the flesh. After being thus suspended an hour, I fainted, and when I came to myself I found the executioners supporting me in their arms; they replaced the pieces of wood under my feet; but as soon as

I recovered, removed them again. Thus I continued hanging for the space of five hours, during which I fainted eight or nine times.”

A fourth kind of torture used in the Tower, was called *Little Ease*. It was of so small dimensions, and so constructed that the prisoner could neither stand, walk, sit, nor lie in it at full length. He was compelled to draw himself up in a squatting posture, and so remain during several days*.

There is a paper in the Somers' Tracts†, said to be written by Lord Burleigh, in which it is stated by way of apology, that “Campion, the Jesuit, was never so racked, but that he was presently able to walk and write.” This paper admits the treatment of Alexander Briant, who, as Wood‡ says, “was tortured with needles thrust into his nails, racked also otherwise in such cruel sport, and specially punished for two whole days and nights with famine, by which he was reduced to such extremities that he ate the clay out of the walls of his prison, and drank the droppings of the roof.” This torture by *famine* is justified in the above paper ascribed to Lord Burleigh, on the ground that Briant refused to write, on being commanded so to do in the Queen's name, in order that his handwriting might be compared

* See Jardine, Criminal Trials, vol. i., p. 22. Lingard's History, vol. viii.

† Vol. i., p. 209.

‡ Ath. Oxon., vol. i., p. 210. Jardine's Criminal Trials.

with certain traitorous papers found in his possession.

On reading such particulars of the cruelties exercised upon prisoners in the Tower, a powerful sympathy is excited for the brief memorials of their feelings which have accidentally reached us. Several inscriptions on the walls of their dungeons made like the notches on the stick of Sterne's captive, have been preserved*. Among these is found a sentiment, "*Per passage penible passons à port plaisant.*" Another, in Italian poetry, to this effect, "Since fortune has chosen that my hope should go to the wind to complain; I wish the time allowed me to live were annihilated; my planet being ever unpropitious and sorrowful." The Duke of Norfolk, in a letter which is extant, earnestly entreats for books. He writes, "Unless I have books to read ere I fall asleep, whenever I wake again I cannot sleep, nor have done so these twelve years." If this want of books for soporific purposes, which was, probably, a severe calamity to the Duke, has something of the ridiculous in its circumstances, the Tower catalogue of suicides presents a series of incidents sufficiently tragical, which may be supposed in a great measure to have been caused, as we know that in several instances it was so, by the Tower-treatment of prisoners, as well unconvicted as

* See 13th vol. Archæol. Antiq. Soc.

convicted, and, in both cases, without any pretext of law.

In the State-Paper-Office are preserved the signatures of Guido Fawkes made to his confessions in which the gradual faltering of the handwriting plainly indicates the corresponding loss of strength and increased agitation of muscles, which would occur after successive applications of torture. In the signature to Fawkes's last confession, which is attested by Sir E. Coke and the other Commissioners, there is a strong appearance of weakness, arising from bodily agony. The Christian name is alone completed; and the pen appears to have fallen from the hand of the writer while he was attempting to form the initial letter of his surname*.

A warrant in the King's handwriting for examining Fawkes upon the rack, authorizes the Commissioners "to use the gentler tortures first, *et sic per gradus ad ima tenditur*." One prisoner in the reign of James having undergone this milder species of violence, and being threatened with the rack on the next day, killed himself by ripping up his stomach with a knife. He declared, when he was dying, that he had been actuated in killing himself by a horror of the tortures he anticipated.

When Anne Askew was placed on the rack in the reign of Henry VIII., and continued resolute

* Fac similes of Fawkes's signatures are given by Mr. Jardine, in his Trials for the Gunpowder Plot.

in preserving secrecy, the Chancellor, Wriothesley, who stood by, ordered the Lieutenant of the Tower to stretch the rack still farther; but that officer refused compliance. The Chancellor menaced him, but met with a new refusal; upon which that magistrate, intoxicated with religious zeal, put his own hand to the rack, and drew it so violently, that he almost tore her body asunder*.

If this inhuman treatment of a female kindle indignation in every bosom generously disposed, scarcely less aversion will be felt towards a woman, a Queen, who could unfeelingly and unhesitatingly, on various occasions, direct similar torments to be inflicted on the objects of her displeasure, or for the quieting of her suspicions. We have noticed Queen Elizabeth's orders to Sir T. Smith on this odious subject. Lord Bacon relates of her, that once, when she could not be persuaded that Haywarde, in his History of the first year of Henry IV., dedicated to the Earl of Essex, had not inserted treasonable matter at the suggestion of some person of greater rank and consequence than himself, she said, with great indignation, "She would have him racked to produce his author." Bacon replied, "Nay, Madam, he is a Doctor, never rack his person; rack his style; let him have pen, ink, and paper, and help of books, and be enjoined to con-

* Hume, vol. v., p. 42; from Fox, vol. ii., p. 578, who transcribes Anne Askew's own paper in which she relates the circumstance.

tinue his story, and I will undertake, by collating his styles, to judge whether he were the author." This was the same book regarding which the Queen asked Bacon, "If he could not find any passages in it that might be drawn within the case of treason?" To which he answered, "For treason sure I find none; but for felony very many." And when her Majesty hastily asked him "Wherein?" he told her that "The author had committed very apparent theft," for that he had translated most of the passages in his book from Cornelius Tacitus.

And if the practice of torture, when enforced by a Queen, presents a view of human nature which it is revolting to contemplate; how painful to find it sanctioned by the example of Bacon, whose philosophical genius is the pride of his country, and the admiration of the world. The following memorable record, (which is not a solitary one for this purpose,) stigmatizes Bacon as a torturer:—

"Upon these interrogatories, Peacham this day was examined before torture, in torture, between torture, and after torture; notwithstanding nothing could be drawn from him, he still persisting in his obstinate and insensible denials, and former answers.

"January 19, 1614.

RALPHE WINWOOD.

JULIUS CÆSAR.

FR. BACON.

H. MONTAGUE.

GERVASE HELWYSSE.

RAN. CREWE.

HENRY YELVERTON.

FR. COTTINGTON.

It will be observed that this transaction occurred two years before the Earl of Somerset's trial; and nearly about the same time when most of the secret confessions were taken that were used upon that trial.

When we read the signature of Bacon, subscribed to such a record of a series of tortures we feel impelled to remonstrate with him, in the language of Voltaire, which we may regret was never presented to those better feelings and enlightened conceptions which have rendered the name of Bacon immortal.

“Ici un spectacle effrayant se presente tout-à-coup à mes yeux. Le juge se lasse d'interroger par la parole, il veut interroger par les supplices : impatient dans ses recherches et peut-être irrité de leur inutilité, on apporte des torches, des levriers, et tous ces instrumens inventés pour la douleur. Un bourreau vient se mêler aux fonctions de la Magistrature, et terminer par la violence un interrogatoire commencé par la liberté. Douce philosophie, toi qui ne cherche la vérité qu'avec l'attention et la patience, t'attendais-tu que dans ton siècle on employât de tels instrumens pour la decouvrir !”

It appears to have been a rule of law, at the time of Somerset's trial, and is so at the present day, that persons who have been convicted of the more flagrant kinds of offences, are incompetent to give evidence in a Court of Justice. As the record

of conviction must be produced in order to incapacitate a witness on this ground, it seldom happens that such an objection of incompetency takes effect. But the witness's own admission of his having been formerly convicted answers every purpose of casting suspicion upon his testimony which his previous conviction ought to accomplish.

It will be admitted that, as Mr. Bentham argues, truth may not unfrequently be extracted from the evidence of convicted criminals. The publicity of their condemnation, it may be observed, is a sufficient warning that their testimony is to be looked upon with suspicion; and it may not follow, because they have yielded to temptation for committing a particular crime, that they will speak untruly under a different temptation, or under no temptation at all. The question, however, for consideration is, whether this kind of evidence, regard being had to the peculiarities of jury trial, is likely to conduce to right verdicts?

Besides this exception to the competency of witnesses being, as has been above observed, rarely effectual; the distinctions between offences that incapacitate and those which do not, lead to technicalities, and much intricacy and occasional contradictions of legal authorities; added to which much perplexity of law has arisen out of the devices framed by Courts in order to afford relief, in various cases, from the strictness of this rule of exclusion.

Mr. Bentham has ridiculed some of these devices of the Judges in a happy vein of humour. He arranges them under the heads, 1. Burning iron. 2. A great seal. 3. A sceptre. And he justly asks, "Is there any part of this theory of restoration capable of being regarded in a serious point of view?"

It affords an example of the slow progress of correct modes of thinking upon judicial matters, that authors of high legal authority have assigned as a reason upon which the rule for excluding the testimony of infamous persons is founded, that incompetence to give evidence in a Court of Justice is fitly a part of the punishment for offences. This rule, like other rules of exclusion, occasionally stifles truth, and is productive of evils of intricacy and uncertainty incident to itself. And, in this instance, these mischiefs seem very much to preponderate over any bad consequences that can be apprehended from admitting the testimony of criminals.

There can be no doubt, however, that the evidence of persons convicted of such a deliberate murder as that of Sir T. Overbury must fall very short, in point of credibility, of that of persons of fair character. It might justly have been inferred, that if such persons supposed that it was their interest to make an untrue statement, or to impart a false colour to facts, or if they had any malice to gratify, they would not be deterred from giving

false evidence by scruples of a tender conscience. They had manifested the weakness of their moral and religious principles. Nor, after braving the penalty of murder, and confessing themselves amenable to it, would they have been restrained, in giving their testimony, by fears of the penalty of perjury.

Sir F. Bacon and Serjt. Montague take several opportunities of impressing upon the Peers the circumstance, that all the confessions which were adduced against the Earl of Somerset had been taken before the persons making them had been convicted, although these persons had been afterwards executed. The depravity of the individuals must have been the same before as after conviction; and the difficulty of proving their guilt had been removed by the convictions and executions. Upon what sound principle then could it be argued, that the confessions of executed felons were entitled to credit, when made before their convictions, if it be admitted that, when made afterwards, they were entitled to none? It was, in effect, to rely upon the absence of a criterion of guilt, for that, at the time the examinations were taken, it did not judicially appear whether the parties making them were murderers, after this criterion had been established by the convictions, and confirmed by the executions of the culprits.

The Duke of Norfolk, at his trial, made an

objection to the testimony of certain witnesses because they had confessed themselves guilty of treason. To which Catline, C. J. answers, "There is none of those witnesses outlawed or attainted of treason, or yet indicted." To which the Duke replies, "They are worse, for they have confessed treason." But, in the Earl of Somerset's case, the persons whose confessions were read had been indicted and executed for the crimes which they confessed. And yet Serjt. Montague recommends their testimony as deserving of unlimited confidence, on the ground which he asserts, that "A delinquent *before conviction* is the most evident, strong, and effectual witness."

The Countess of Somerset's examination was used to the prejudice of her husband, and contrary to the modern rule of evidence, which excludes the testimony of husband and wife, both for and against each other. But this rule is founded on general expediency, in regard to the confidence and peace of married life, and, in some measure, on compassion, rather than on the incredibility of the wife's evidence. For when a wife is examined as to matters against her own inclination, though she be exposed to strong temptation to perjury, and her case may excite pity, yet her testimony which is opposed to her wishes is likely to be true.

Mr. Hume, in his commentaries on the law of Scotland, by which the like rule is established as

by the English law, observes, that "if the wife be willing to appear at the trial of her husband, it can only be from one of two motives, out of affection to him, and to save him by her perjury, or else to convict him for the satisfaction of hatred and revenge." The expediency of the rule upon this subject is canvassed by Mr. Bentham, in his "Rationale of Judicial Evidence." He animadverts on the "heroic dimensions given to the conjugal flame by the sentimentality of English lawyers." The present law is certainly attended with many collateral advantages, that, perhaps, may be thought to counterbalance the occasional exclusion of truth.

However, the evidence attributed to the Countess of Somerset against the Earl, if its hearsay and secret character did not altogether destroy its effect, would appear to be entitled to very great weight, in point of credit.

The only matter, concerning which it was judged by Sir F. Bacon expedient to read the Countess's examination at Somerset's trial, was her explanation of the term "letters," in her note to Sir Gervase Helwysse, viz., that it meant "poison." It appears from a letter of Sir F. Bacon to King James, that the Countess in her examination in the Tower, had exculpated her husband, in regard that she said she did not mean that *he* had "bid her," when she wrote to Sir Gervase Helwysse, "I was *bid* to say that these tarts came from me," an expression upon which the whole proof was rested of one of the two acts of procuring

poisons with which it was attempted to implicate the Earl of Somerset. Thus Sir F. Bacon appears to have thought proper to blazon forth, what a wife said against her husband, and to suppress what in the same examination, she said for him.

The subject of the competency of a wife to give evidence against her husband, was much considered in the reign of Charles I., when the judges determined that Lord Audley's wife might give evidence against him, for having aided one of his servants in committing a rape upon herself. The judges held that where the wife is the party grieved, and on whom the crime is committed, she is to be admitted a witness; and a curious reason assigned is, that in such a case, a villain may be a witness against his lord.

Lord Audley was found guilty and executed. In a religious discourse upon the scaffold, he protested that he was innocent of the crime for which he suffered.

Lord Audley's speech to the Peers is quaintly expressed, but presents some circumstances which should have induced the judges to examine the evidence against him with much caution. After denying the charge, he presents for their Lordships' consideration, *three woes*.

"1. Woe to that man whose wife should be a witness against him!

"2. Woe to that man whose son shall prosecute him, and conspire his death!

“3. Woe to that man whose servants should be allowed witnesses to take away his life!

“And he willed the Lords to take this into consideration; for it might be some of their cases, or the case of any gentleman of worth, that keeps a footman or other, whose wife is weary of her husband, or his son arrived to full age, that would draw his servants to conspire his father's death. He said further, that his wife had been naught in his absence, and had had a child which he concealed to save her honour. That his son was now become twenty-one years' old, and he himself was old and decayed; and the son would have his lands, and the other a young husband, and, therefore, by the testimony of them, and their servants added to their own, they had plotted and conspired his destruction and death.” It would appear that Lord Audley would not have been permitted to call witnesses; certainly his witnesses could not have been sworn. Twelve out of twenty-seven of the Peers triers acquitted him.

The following examination of the wife of Eugene Aram, before a Coroner's inquest, was not allowed to be used in evidence against him, agreeably to the existing rule of law; but corroborated, as it was, by circumstances,* it seems entitled to the greatest weight in the investigation of truth.

* Among other circumstances, Houseman, at the inquest, took up one of the bones that had been found, and dropped this unguarded expression, “That is no more Dan Clark's bone than it is mine.”

Daniel Clark was an intimate acquaintance of her husband's; and that they had frequent transactions together before the 7th of February, 1744-5, and that Richard Houseman was often with them: particularly, that on Thursday, the 7th of February, 1744-5, about six o'clock in the evening, Aram came home when she was washing in the kitchen; upon which he directed her to put out the fire, and make one above stairs: she accordingly did so. Aram then went out again, and about two o'clock in the morning, on Friday, the 8th of February, Aram, Clark, and Houseman, came to Aram's house, and went up stairs to the room where she was: they staid about an hour. Her husband asked her for an handkerchief for Dicky (meaning Richard Houseman) to tie about his head: she accordingly lent him one. Then Clarke said "*It will soon be morning, and we must get off.*" After which, Aram, Houseman, and Clark, all went out together:—that upon Clark's going out, she observed him take a sack or wallet upon his back, which he carried along with him: whither they went, she could not tell. That about five o'clock the same morning, her husband and Houseman returned, and *Clark did not come with them.* Her husband came up stairs, and desired to have a candle, that he might make a fire below. To which she objected, and said "There was no occasion for two fires, as there was a good one in the room above, where she then was." To which Aram (her husband) answered, "Dicky (meaning Richard Houseman) was below, and did not choose to come up stairs:" upon which she asked (Clark not returning with them) *what they had done with Daniel?* To this her husband gave no answer; but desired her to go to bed, which she refused; and told him *they had been doing something bad:* then Aram went down with the candle. She being desirous to know what her husband and Houseman were doing, and being about to go down stairs, heard Houseman say to Aram, "*She is coming.*" Her husband replied, "*We'll*

her." Houseman then said, "*If she does she'll tell.*"—"What can she tell?" replied Aram, "*poor simple thing! she knows nothing.*" To which Houseman said, "*If she tells that I am here, 'twill be enough.*" Her husband then said, "*I will hold the door to prevent her from coming.*" Whereupon Houseman said, "*Something must be done to prevent her telling,*" and pressed him to it very much; and said, "*If she does not tell now, she may at some other time.*" "No," said her husband, "*we will coax her a little, until her passion be off, and then take an opportunity of shooting her:*" upon which Houseman seemed satisfied, and said, "*What must be done with her clothes?*" Whereupon they both agreed, that *they would let her lie where she was shot in her clothes.* She hearing this discourse, was much terrified, but remained quiet until seven o'clock in the same morning, when Aram and Houseman went out of the house a second time. Upon which, coming down stairs, and seeing there had been a fire below, and all the ashes taken carefully from the grate, she went and examined the dunghill, and perceiving ashes of a different kind to lie upon it, she searched among them, and found several pieces of linen and woollen cloth, not entirely consumed, which had the appearance of belonging to wearing apparel. When she returned into the house, she found the handkerchief she had lent Houseman the night before; and looking at it, *found some blood upon it, about the size of a shilling:* upon which she immediately went to Houseman, and showed him the pieces of cloth she had found; and said, *she was afraid they had done something bad to Clark.* But Houseman affected great surprise—pretended he was a stranger to her accusation,—and said he knew nothing what she meant. From the above circumstances, she believes Daniel Clark to have been murdered by Richard Houseman and Eugene Aram, on the morning of Friday, the 8th of February, 1744-5.

Evidence of opinion is not, according to the modern practice of Courts, admissible, except with regard to matters of science or professional skill. In such cases the drawing of a conclusion from ascertained facts does not depend wholly on common sense, but requires peculiar knowledge and experience. But in matters of ordinary life, if evidence of opinion were allowed, trials would be interminable; whilst juries would be constantly mistaking opinions for proofs, and would adopt the suggestions of interested or partial witnesses, in order to escape the mental labour of making their own reflections on the testimony of facts.

In the cases in which evidence of opinion is admissible according to present rules of law, its reception too generally leads to inconvenient prolixity and perplexing contradictions. Thus, at the trial of Spencer Cowper (afterwards a judge) for drowning Mrs. Stout, a Quakeress, upwards of a dozen physicians were called on each side, besides a number of sailors, to give opinions whether Mrs. Stout had been drowned, or had drowned herself. Baron Hatsell, the judge who tried the case, apparently in a state of bewilderment, tells the jury, "The doctors have talked a great deal of the water going into the lungs, or into the thorax; but, unless you have more skill in anatomy than I, you would not be much edified by it. I acknowledge I never studied anatomy, but I do

perceive that the doctors do differ in their notions about these things.”

In Donellan's case, the evidence of the celebrated John Hunter is at direct variance with that of all the other doctors who are called as witnesses. In the case of Angus, tried at Liverpool for poisoning in an attempt to procure abortion, Mr. J. Lawrence thus adverts to the evidence of opinion by medical men. He says, “There is certainly a considerable difference of testimony in this case. You hear medical men, on one side, who tell you that, in their judgment, the deceased must have been poisoned. But, are they sure of it? They won't say they are. Upon what do they found their opinion? Some of them have read one author: they give credit to him, but then they own they differ from him in many of his conclusions; so that a great part of this is a subject of controversy even among the learned themselves.” In too many instances, the differences observable in the evidence of opinion in Courts of Justice, are widened, if not engendered, by an *esprit de corps* which sometimes blinds the judgment, whilst it animates witnesses, who are perhaps liberally remunerated for delivering opinions upon oath in favour of a party calling them into Court.

Just after evidence had been given, at the Earl of Somerset's trial, of the Pardon, which had been prepared by Sir R. Cotton, at the Earl's request,

Mr. Serjeant Crewe, with much artifice, observes, "And this was it that made Weston fear that the net was laid for the little fishes, and that the great ones would break through." Alderman Bowles was then called to prove this speech of Weston. It does not appear that Weston ever knew of the pardon; but, if he had done so, the evidence was only that of his opinion concerning the motives of procuring it, or its consequences.

Again, Simcox deposed that "Weston wondered Sir T. Overbury had so good an opinion of my Lord, and thought he had not so much wit as the world esteemed, for there was no man hindered his liberty but he." And "Weston wondered Sir T. Overbury should have so great confidence in my Lord of Somerset, and think that he loved him so well; for he knew that he could not abide him, and thought of nothing less than his liberty." So Franklin deposes that an extract from a letter which the Countess read to him, "*he thinks* was meant about Sir T. Overbury." And, what may be considered one of the boldest strokes of opinion to be found in the State Trials, Franklin "further saith, he dares take his oath the Earl was guilty."

Such evidence of opinion was not unfrequent in ancient State Trials.

It has been seen above, that evidence was given at Sir W. Raleigh's trial, of the opinion of a

stranger at Lisbon, whose name was not mentioned, that "Don Raleigh and Don Cobham would cut the King's throat" before he was crowned. Of a similar nature was the evidence in one of the trials, for the Popish Plot, of a Catholic (not the prisoner under trial) having said, "If C. R. would not become R. C. (Rex Catholicus) he would not long be C. R."

One of the most modern, as well as one of the most disgusting, instances of the kind ever produced in a Court of Justice, appears in Lord Howard's testimony upon the trial of Algernon Sidney. "Truly, my Lord, in the entering of the evidence I am about to give, I cannot but observe what a natural uniformity there is in truth. For the gentlemen that have been before have so exactly instanced, in every particular, with what I have to say, that two tallies could not more exactly fall into another, though I confess I had not seen their faces, till the plot broke out, for some months before."

Irrelevant evidence diminishes the probability of correct verdicts in proportion as it wearies and bewilders the minds of jurymen, thereby preventing them from giving the attention they would otherwise bestow on evidence which is relevant. Irrelevant evidence is attended with yet greater mischief, inasmuch as, by affording scope for the use of the well-known sophism called "mistaking the question," juries are apt to conclude that what

is proved is what they are called upon to determine, else they may naturally ask, why did the Judge permit the evidence to be brought under our review? Such evidence is also very objectionable, on the ground on which Sir M. Foster eulogizes the Statute that prohibits proof of overt acts of high treason, which are not stated in the indictment, viz., that a prisoner has not fair notice of what is to be alleged against him.

Some important questions arise as to the relevancy of parts of the evidence produced at the Great Oyer of Poisoning. In the earlier trials much stress was laid upon the *adulterous* intimacy between the Earl and Countess of Somerset, before their marriage, and on the letters of the Countess to the astrologer "Sweet Father" Forman, and to her confidante, "sweet" Mrs. Turner, about magical means of securing the Earl of Somerset's affections; and a display was made of indecent puppets, the skin of a dead man, and other enchantments. These transactions were relevant for the purpose of explaining the cause of the Earl of Somerset's quarrel with Sir T. Overbury, the connection between the Countess of Somerset and Mrs. Turner, and the intimacy that existed between the Earl and Countess, although they were not married, before and during Sir T. Overbury's imprisonment. But these matters required, in a very slight degree, the aid of such facts, as they were sufficiently apparent from more direct proof. The

manifest object, however, of producing this evidence, at least of dilating upon it, was to enlist the moral and religious feelings of the Jurors and auditory against the prisoners by a tale of adultery and sorcery. Accordingly, Sir E. Coke took occasion, with reference to the connection between the Earl and Countess of Somerset to say, that "Poison and Adultery went together."

In like manner, Sir Edward Coke prejudiced the minds of the Jury in Mrs. Turner's trial, by saying, before the trial was concluded, that the prisoner had the *seven* deadly sins; for she was "a whore, a bawd, a sorcerer, a witch, a papist, a felon, and a murderess." On a previous occasion he had declared that "poisoning was a popish trick." At the same trial a witness of the name of Mercer was allowed to depose that "Franklin had married his sister, and that he thinketh in his conscience she was poisoned."

It may admit of argument how far the Countess of Somerset's letter to the Governor of the Tower, her persuasion to Sir D. Woodes to assassinate Overbury, her procuring Weston to be appointed Overbury's gaoler, and her declarations to Franklin of her motives for poisoning Overbury, (all which occurred before her marriage with Somerset,) were relevant evidence to affect the Earl? Whether a ground of conspiracy had been established not merely for the imprisonment of Overbury, but also for his death, sufficient to let in evidence of acts

done by any of the conspirators in furtherance of the common purpose*? These questions may lead a reader of the trial in the present day to reflect how far some of the most striking circumstances in the evidence, though they may appear conclusive of the Countess's guilt, may not be so manifestly relevant to criminate the Earl. In one point of view they may be thought to operate in his favour, as showing inducements and contrivances on the part of the Countess and her agents, sufficient to account for the murder, without implicating him by way of a cause to explain an otherwise unaccountable effect.

It may be supposed that the counsel for the prosecution were little scrupulous on the ground of irrelevancy about producing any evidence which might prejudice the Earl, when we advert to the trial of Garnet for the Gunpowder Plot, which occurred a few years previously. At Garnet's trial all the treasonable attempts on the life of Queen Elizabeth, in which it was not pretended that Garnet had been concerned, were pressed on the attention of the Jury in Sir E. Coke's opening address, and these treasons of the last reign were

* See the distinctions upon this subject in Hardy's case, 24 Howell's St. Tr., 704; Stone's case, 25 St. Tr., 1311; Horne Took's case, 25 St. Tr., 220. In Sir J. Fenwick's case, 13 Howell's St. Tr., Sir Bartholomew Shower made a very powerful argument against the relevancy of the evidence, that Lady Fenwick had tampered with one of the witnesses for the prosecution.

successively proved by the confessions of the executed culprits. The Earl of Salisbury, indeed, declared in Court that the object of the proceeding was not so much to establish Garnet's guilt, as to make "a public and visible anatomy of Popish doctrine and practice."

The only subject which remains to be considered with regard to the nature of the evidence produced at the Earl of Somerset's trial, is that of the partial reading of documents. Of all the devices contrived in ancient State Trials for precluding the possibility of an accused person being acquitted, this practice seems the most repugnant to justice: For by the artful selection of passages and detaching them from their context or other explanatory or contradictory matter, a confession, deposition, letter, or other paper was often made to appear to have a totally different import from what really belonged to it, and to obtain credit which no one reading the entire document would think it deserved. This process of garbling evidence was, in effect, equivalent to manufacturing it: so that prisoners were not convicted upon the testimony of witnesses, but such testimony served only in the nature of a raw material for the ingenuity of the prosecuting counsel to fashion and varnish as they pleased. The process was similar to that of the three brothers, in Swift's "Tale of the Tub;" who, although they could not find the remotest allusion to *shoulder-knots* in their Father's will, whereby

their coats were bequeathed to them; they set to work to find that the will contained these ornaments, *totidem syllabis*, and, failing in this search then *totidem literis*; and where a *k* was not to be found at all, supplied its absence argumentatively.

According to the modern rule on the subject, which appears to be founded on just and sensible reasons, the whole of an examination or confession or other document should be read together; because one part of the context may qualify another, and thus also inconsistencies will be more apparent. It would also be considered very unfair, in the present day, to put forward a particular examination of a person, and to suppress what he had said in some previous or subsequent examination, explanatory or contradictory of the statement made use of; especially, if the prisoner had no means of knowing of the prior or subsequent statement.

On comparing the scraps of depositions and confessions read at different stages of the Overbury trials, with the documents set forth in the last chapter, and now for the first time published, it must appear that the counsel for the prosecution suppressed many important qualifications of the statements which they read, and that they concealed various matters which would have been material for the defence of the prisoners, and which are to be met with in the examinations of the very persons upon whose statements as to other points

they laid the greatest stress. Several instances of this kind of garbling of evidence have been pointed out in the last chapter on introducing the several new documents to the reader's notice.

The practice of the same disingenuous artifice is apparent even on a comparison of the printed trials with each other. It might, for instance, have been expected, that so important a matter as Franklin, the Apothecary's narrative regarding the furnishing of poisons, which was brought forward upon his own trial, and on those of Sir G. Helwysse and of the Earl of Somerset, would have appeared in the reports of those three trials to have been consistent, if not identical. No two accounts, however, of what Franklin confessed are found to correspond.

At Sir Gervas Helwysse's trial, on the 16th of November, Franklin is stated to have confessed as follows:—"Mrs. Turner came to me from the Countess, and wished me from her to get the *strongest* poison I could for Sir T. Overbury. Accordingly, I bought seven, viz., aqua fortis, white arsenic, mercury, *powder of diamonds*, lapis costitus, great spiders, and cantharides. All these were given to Sir T. Overbury at several times." "Sir T. Overbury never eat white salt, but there was white arsenic put into it. Once he desired pig, and Mrs. Turner put into it lapis costitus. The white powder which was sent to Sir T. Overbury in a letter he knew to be white arsenic. At

another time he had two partridges sent him from the Court, and water and onions being the sauce, Mrs. Turner put in cantharides: so that there was scarce any thing he did eat, but there was some poison mixed. For these poisons the Countess sent me rewards: she sent me many times gold by Mrs. Turner. She afterwards wrote unto me to buy her more poisons. I went unto her and told her I was weary of it: and I besought her upon my knees, that she would use me no more in those matters. But she importuned me, bade me go, and enticed me with fair speeches and rewards; so she overcome me and did bewitch me."

Upon Franklin's own trial, his confession, without date, was read thus: "He confesseth that in a house near to Doctors' Commons, Mrs. Turner did first come unto him about the poisoning of Sir T. Overbury, and prayed him to provide that which *should not kill a man presently*, but lie in his body for a certain time, wherewith he might languish away by little and little: at the same time she gave him four angels, wherewith he bought a water called *aqua-fortis*, and sent it to Mrs. Turner, who, to try the operation thereof, gave it to a cat, wherewith the cat languished, and pitifully cried for the space of two days, and then died. Afterwards Mrs. Turner sent for him to come to the Countess, who told him that *aqua-fortis* was too violent a water; but what think you (quoth she) of *white arsenic*? He told her it was too violent.

What say you (quoth she) to *powder of diamonds*? He answers, I know not the nature of that. She said, then he was a fool, and gave him pieces of gold, and bade him buy some of that powder for her."

At the Earl of Somerset's trial, according to the printed report, Franklin's confession, without date, was read, that "Mrs. Turner desired him to buy some of the *strongest* poisons he could get, which he did, and brought them to Mrs. Turner and my Lady, and at that time they both swore him to secresy. And afterwards he perceived that these poisons were sent to the Tower; and amongst the rest a kind of white powder, called arsenic, which *she told him* was sent to Overbury in a letter; and after showed him, and told him of many more poisons that were sent, and to be sent by Weston to Overbury. And those poisons which my Lady shewed him, were wrapped in a paper, written with a Roman hand. And they tried some of the poisons upon a cat *or* a dog, which was wonderfully tormented and died."

According to the manuscript report of the Earl's trial, Franklin's confession, taken on the 16th of November, was read, for the particulars of which the reporter refers to the former trials, but says that "briefly Franklin confessed that he procured the poisons for the Countess." This report subsequently states that "*another* confession of Franklin was read, taken on the 12th of November,

336 THE GREAT that the Countess of Essex had a paper, wherein the names of the *eight* several poisons administered to Overbury were written in a fine Roman hand, which the Countess continually kept."

It would be a matter of considerable interest and curiosity if any original examination of Franklin, or any authenticated copy of one, could be discovered. Sir F. Bacon, in the speech which he prepared for delivery in case the Countess of Somerset had pleaded not guilty, mentions *two* examinations of Franklin, one taken on the 16th and another on the 17th of November, and it has been seen that in the manuscript report of the Earl's trial a *third* examination of Franklin is mentioned, bearing date the 12th of November. But no such documents are now to be found in the State Paper Office, or the British Museum, or other public repositories which have been searched for the purpose.

It is a remarkable circumstance that various pieces of documentary evidence, used in different State Trials in ancient times, that are of the greatest importance, are lost, whilst original evidence of minor consequence, read at the same trials, is to be found in abundance. The original confession of Lord Cobham, upon which Sir W. Raleigh was convicted; and the Duke of Norfolk's confession, which was much relied upon at his trial in the reign of Elizabeth, baffled the researches of Mr. Jardine.

With regard to Franklin's examinations, it is

curious that ^{the} *der of diamonds* which he made after his conviction have been preserved, as appears from the last preceding chapter of this work. They make it very supposable that Franklin may at his different examinations have told different stories. If Franklin's original examinations, taken previously to his trial, were of the same rambling character as those which we know to have been made afterwards, it is not surprising that they should have been destroyed; for no person reading them in an ungarnished state could possibly attach any weight to his testimony.

But, to compare the statements of Franklin's confessions with each other: According to one of them, Franklin commences by furnishing poisons "that should not kill a man presently, but lie in his body a certain time." According to another, they are to be "the strongest he could get." These two accounts were not read at the same trial, as if one related to an earlier and the other to a later stage of his employment. On the contrary, by one account, he procures *powder of diamonds* as one of the *strongest* poisons he could get; and by the other account, he purchases *powder of diamonds* as for a *slow* poison, after the Countess had told him that he was a fool for not knowing it to be a slow poison, and after receiving money from her to buy it, because it was a slow poison.

Again, Franklin is very particular, according to

one examination, in specifying the *seven* poisons which he furnished; but in another he states that on the Countess's paper "the names of *eight* poisons were written in a fine Roman hand." The account of poisoned pig, and of the partridge sauce, with cantharides in the place of pepper, was probably thought to be better suited to the credulity of a Jury than of the Peers, and therefore, as it would seem, was omitted at the Earl of Somerset's trial.

The linking together, by a species of cross-reading, what is separated by important intervening matter, and wherever an examination, Janus-like, looks as well to an acquittal as to a conviction, the taking only the face that is turned against the prisoner, are so repugnant to truth and justice, that we should be inclined to suppose some error existed in the report of a trial, rather than that persons of high reputation had ever resorted to such practices. But, unfortunately, there are irrefragable proofs of this being the common course of proceeding in ancient State Trials.

Sir N. Throgmorton, when a part of what was stated to be his own confession was read against him, desired that the whole paper might be read, as thereby the part selected by the prosecuting Counsel would appear to the Jury in a different light. But this was denied him; and he was told, that reading the whole paper would be "but loss of time, and would make nothing for him."

The following letter directed to "Mr. Edward Coke, Esq., her Majesty's Attorney General," is among the papers relating to the Earl of Essex in the State Paper Office.

"Sir—I pray you, if possibly you can, let not Blunt's words be read, wherein he saith, that if he were committed any farther than to the Lord of Canterbury's house, the Lord Keeper's, or Mr. Comptroller's, he would do, &c. My reason is this—it will show a spirit of prophecy, and, now confessed, *seems a little to savour as if he did coin it.* These words only I would have left out, for, indeed, the rest is very necessary; but that divination is too suspicious.

"Yours, assuredly,

"ROBERT CECIL.

"Methinks it might be in these words, 'that if he were not committed to any prison,' or in some such like; or else that portion wholly left out; but, in any wise, let not these places be named, because it proved so *ex post facto.*"

At the trial of Dr. Parry for High Treason, in the reign of Queen Elizabeth, a paper, purporting to have been written by the prisoner, was read, and was afterwards printed by the Queen's printer, and circulated by the Government. On a comparison of the printed document with the letter in Parry's own handwriting, it appears that various

passages of the original are omitted: amongst others the following: "The Queen of Scots was of her blood, and her undoubted heir in succession; that she was so considered abroad, and would be found so at home."

In the trials for the Gunpowder Treason, the following passage was omitted in reading a letter from Tresham, who had been arrested for that treason, and who died in the Tower. "Your Lordships would not accept of this answer, but said that I should be made to speak thereunto, and I might thank myself if I be worse used than I had been since my coming to the house." Again, in the following passage, "I told your Lordship (*to avoid ill-usage*) that, &c., &c," the words in italics are omitted for an obvious reason.

In reading the examination of Mrs. Vaux, upon Garnet's trial, the following passage is omitted. "At those times Mr. Garnet always gave him good counsel, and persuaded him to rest contented. She remembereth he would use these words, 'Good gentlemen, be quiet, God will do all for the best; we must get it by prayer at God's hands, in whose hands are the hearts of Princes.'" In the following passage of the same examination, the words in italics are omitted. "The last summer he was likewise at another house they had, where he had some conference with Mr. Garnet, *where likewise he exhorted him to all patience.*"

The following specimen of a declaration of

Garnet, prepared by Sir E. Coke for being read at Garnet's trial, will exhibit the mechanism by which examinations were made to state whatever prosecuting counsel wished, and no more than they wished. It is to be premised that the body of the paper is entirely written by Garnet; but that the letters in the margin distinguishing the paragraphs, and those at the head of the paper pointing out to the officer of the Court what he was to read, are in Sir E. Coke's handwriting. The passages read at the trial are distinguished by italics*.

A

B

D

F

13^o Martii.

- A *I have remembered some things, which, because they were long before my knowledge of the powder acts, I had forgotten.*
- B *About Michaelmas after the King came in, Mr Catesby told me that there would be some stirring seeing the King kept not promise.*
- C And I greatly misliked it, saying it was against the Pope's express commandment; for I had a letter from our General thereof, dated in July before, wherein

* See Mr. Jardine's State Trials, vol. ii., p. 357. Mr. Jardine has performed a very important service in exhibiting the secret machinery of the trials of Throgmorton, Norfolk, Parry, Essex, Raleigh, and the Gunpowder traitors. He points out a variety of instances in which evidence was garbled for the purpose of the trial; and sometimes underwent a second process of garbling for the purpose of publication.

was earnestly, by Clement, commanded the very same, which this Pope commanded the last summer. Therefore I earnestly desired him that he and Mr. Thomas Winter would not join with any in such tumults; for in respect of their often conversation with us, we should be thought accessory. He assured me he would not. But neither he told, nor I asked, any particulars.

D *Long after this, about Midsummer was twelve-month, either Mr. Catesby alone, or he and Thomas Winter together, insinuated that they had somewhat in hand, and that they would sure prevail.*

E I still reproved them; but they entered into no particulars.

F *Soon after came Mr. Greenwell (Greenway) to me, and told me as much.*

G I greatly misliked any stirring, and said, "Good Lord! how is it possible that God work any good effect by these men? These are not God's knights, but the devil's knights." Mr. Greenwell told this to Thomas Winter, who about a month after Michaelmas, came to me and expostulated that I had so hard a conceit of him, and would never tell him of it. As for their intermeddling in matters of tumults, since I misliked it, he promised they would give over; and I never heard more of it until the question propounded by Mr. Catesby. As for his asking me of the lawfulness of killing the King, I am sure it was never asked me in my life; and I was always resolute that it was not lawful; but he was so resolved in conscience, that it was lawful in itself to take arms for religion, that no man could dissuade it, but by the Pope's prohibition, which afterwards I inculcated, as I have said before. The ground of this his resolute opinion I will think of. HENRY GARNET.

The passages omitted are obviously favourable to a belief in Garnet's innocence, and therefore Sir E. Coke suppressed them.

In the trials for the Gunpowder treason, it seems to have been deemed a matter of great importance to keep Lord Mounteagle's name from appearing in any of the examinations. In an examination of Tresham in the State Paper Office, a small slip of paper has been curiously pasted over the words *The Lord Mounteagle*, and a dash is substituted for the same. On the other side of the leaf, the date of the examination is strongly written in red ink by Sir E. Coke, opposite the dash, which, when the ink was fresh, must have rendered the words sought to be obliterated utterly illegible; but, as the red ink has faded by age, the words "The Lord Mounteagle," are now distinctly visible through the pasted slip of paper on holding it against the light. There is also an examination by Winter in the State Paper Office, in which great pains appear to have been taken to erase the name of Lord Mounteagle, but the letters are still faintly discernible. In the reading a letter written by Tresham, a passage is directed by Sir E. Coke to be omitted, which has apparently reference to Lord Mounteagle. The obvious design of so much concealment, was to prevent the conclusion being drawn that Lord Mounteagle was privy to the Gunpowder Plot previously to the day of his receiving the enigmatical letter for pretending to

decipher which King James arrogated to himself the shrewdness of the sphynx.

In the margin of some examinations taken by Sir E. Coke, such notes as these occur in his handwriting. "Read A and B only." "Read not this." "*Hucusque*," (thus far only,) &c. A passage in an examination read at Sir W. Raleigh's trial, which had a tendency to implicate the French Government in the plot, is scored under, and marked in the margin by Sir E. Coke, "*Cave!*" (beware!) In the Overbury examinations there do not appear such palpable directions, because, although Sir E. Coke took the evidence in his own handwriting, he did not conduct the trials. But the paragraphs are all lettered for the purpose of such directions, and the margins contain a variety of private marks.

Sir E. Coke on various occasions arising upon the trials for the murder of Sir T. Overbury, professed a belief in the notion of the existence of slow poisons. As a means of criminating the prisoners, Sir E. Coke says on one occasion, "There are divers sorts of poisoning, by some whereof a man shall die a month or a quarter of a year after, '*ut sic se sentiat mori*;' and it shall not be known in what manner he is poisoned; as one Squire, a Priest, should have poisoned Queen Elizabeth by poisoning her saddle." And Sir E. Coke remarks, in his charge to the Grand Jury in Weston's case, that "the Devil had taught divers to be cunning

in poisoning, so they can poison at whatever distance of time they please, by consuming the *nativum calidum* or *humidum radicale* in one month, two, or three, or more, as they list ; which they by four manners of ways do execute—1st, gustu ; 2nd, haustu ; 3rd, odore ; 4th, contactu.”

There are many ancient testimonies to the existence of slow poisons producing their fatal effects after intervals of weeks or months, as Plutarch, Theophrastus, Livy, Tacitus, and Aulus Gellius. In more modern times the like powers have been attributed to the *Aqua Tophana*, and the *Succession Powder**. In 1659, the detection of a society of women at Rome, who had associated themselves for the purpose of poisoning, created great alarm. In the year 1670, the Marchioness Brinvilliers, who, among other victims, poisoned her own father and two brothers, created a like sensation in France. An Inquisition, called the *Chambre Ardente*, was established at Paris, for the purpose of watching the use of poisons. By means of this institution, two women who dealt

* The *Aqua Tophana* has been supposed, by some persons, to have been a solution of arsenic, with the addition of the herb cymbalasia, growing on old walls ; by others it is supposed to have consisted of cantharides and opium. The *Succession Powder* is supposed to have been made of sugar of lead, with the addition of some more volatile corrosive. The poisons found in the casket of St. Croix, the lover of Brinvilliers, were corrosive sublimate, opium, regulus of antimony and vitriol.

largely in poisons, La Vagren and La Voison, were detected in 1680, and burnt alive.

The most famous poisoner of modern times, was a woman at Naples of the name of Tophana, the inventress of the *Aqua Tophana*, which was administered in drops proportioned to kill within any particular time that might be required. This woman, who fled from Naples in 1709, was visited as a curiosity at an asylum in 1730. She is stated to have poisoned upwards of six hundred persons.

These celebrated adepts at poisoning became famous after the time of Somerset's trial; but shortly before that period, Shakspeare's writings show the general notion in England of the efficacy of slow poisons—

Their great guilt,
Like poison given to work a great time after,
Now 'gins to bite the spirits.

Tempest, Act iii., s. iii.

And the stories current in the reign of James I., of Catherine de Medicis, and of her perfumer René, who had obtained the reputation of being able to convey poisons through a variety of vehicles, as a jelly, or the smell of a rose, had probably possessed the minds of the Peers who tried Somerset, with a belief that slow poisoning was a craft which was taught and practised.

In the present day it may be doubted if a medical man could indicate with certainty any poisonous

preparation of which the effect should be fatal, but should nevertheless be suspended for two months, or even a week. And, perhaps, good scientific testimony could be produced negating the quality of being a slow poison to any of Franklin's drugs, unless, indeed, they be repeated in small doses for a considerable period of time.

The Peers who tried Somerset, would have had their minds prepared for a tale of the vending of poisons for lucre by a starving apothecary, in consequence of the powerful impression that must have been made on all frequenters of the theatre by Shakspeare's colloquy between Romeo and the Mantuan apothecary, whilst it was yet a recent production of his genius. Popular belief had, also, within a few years before the trial, imputed the death of Amy Robsart, Lord Leicester's wife, and of Prince Henry, to poison. And it must, about the same time, have been the current talk of the town, how that Ben Jonson's mother, (when her son's friends were supping with him, to celebrate his liberation from prison after confinement for reflecting on the Scotch nation,) produced a phial of poison, and declared, that if her son's ears had been cut off, (which was not an unusual punishment before the time of the Commonwealth,) for writing an imputed libel, she would have mixed half the poison in his drink, and would have drunk off the other half herself.

Sir A. Weldon writes that Franklin confessed

that Sir Thomas Overbury was *smothered* by him and Weston, and was not poisoned. The suspicious circumstance that none of Franklin's examinations taken before his trial are forthcoming, gives some countenance to this report. The story of poisoning is certainly a very singular one. Weston is represented, according to the hearsay of Franklin, to have said that Overbury had taken as much poison as would have killed twenty men. Sir F. Bacon, in his opening speech on Somerset's trial, states that Weston "chased Sir T. Overbury with poison after poison, poison in salt meats, poison in sweet meats, poison in medicines and vomits." In the speech which he had prepared for delivery, if the Countess of Somerset had pleaded "Not Guilty," he speaks of a "*volley* of poisons; arsenic for salt, great spiders and cantharides for pig-sauce, or partridge-sauce, because they resembled pepper; mercury for tarts, in which no colour is so proper." In the Star Chamber, Bacon says, "The poets feign that the Furies had whips corded with poisonous snakes: and so a man would think that this were the very case, to have a victim tied to a post, and to scourge him to death with snakes; for so may truly be deemed diversity of poison." And, lest the Peers should be sceptical about so incessant a *volley* of poisons being directed against Overbury from April to September before he was killed, Bacon adds, "His body was come, by the use of poisons, to the state of Mithridates' body

by the use of treacles and preventatives, that the force of poisons was blunted upon him."

This story of poisoning is unlikely in itself, and rests upon a very weak foundation of evidence. In all the indictments the charge of poisoning is confined to four specific acts: and it is only with regard to two of these, the arsenic administered in June, and the mercury in tarts in July, that any attempt was made to show direct co-operation on the part of the Earl of Somerset. It will probably be thought that the evidence adduced for this purpose was of the most unsatisfactory nature; whilst the suggestion that Overbury died in September from arsenic and mercury taken in June and July is in the highest degree improbable.

The *presumptions* from destroying papers, obtaining a pardon, appointing Helwysse Lieutenant of the Tower, and Weston gaoler over Overbury, are open to several infirmative considerations. Some remarks have above been made on the presumption arising from the destruction of papers: similar observations are applicable to the pardon. Besides, we do not know its date, or the precise tenor of it; both which, it may be supposed, would have been minutely set forth, if the prisoner would have been prejudiced by them. But it is important to notice that anciently it was a very common practice to grant pardons to persons holding public employments; the records of the State Paper Office show that it was a matter of course for any ambassador

returning from abroad to take out his pardon. It is remarkable that the person who assisted the Earl of Somerset in framing the pardon, and in mutilating the papers, was Sir R. Cotton, the eminent antiquary, who had so large a share in the collection of our national records; and who in public and private life acquired the esteem of the most eminent characters of his day.

The appointments of Helwysse and Weston are not traced to the Earl of Somerset. It is clear that Helwysse paid a considerable sum of money for his place, a circumstance which is noticed by Bacon because it gave him an opportunity of reflecting on the expression, "He (Helwysse) must bleed," (pay a large sum,) which Bacon said was a presage of Overbury's death. The occasion of the Privy Council removing the preceding Lieutenant, Waad, is stated by Somerset to have been that he allowed the Lady Arabella the use of a key; a statement which he would not have ventured to make in the presence of all the Privy Councillors, if it had not been true. It is observable that Helwysse, throughout the long details contained in his dying declarations, does not refer his own appointment to the Earl, or criminate him in any way.

With regard to the *direct* evidence against Somerset, other than what relates to the arsenic and the tarts before adverted to, it depends chiefly on the hearsay of Franklin and Simcox, which, for

the most part, is a *double* hearsay, and, with respect to Franklin's examinations being read, a *treble* hearsay; and that, too, of persons totally destitute of credibility.

Lord Northampton's letters are the only authentic piece of testimony which awakens a strong suspicion of the Earl's guilt. But they do not appear incompatible with the supposition of what Somerset acknowledged, that he was a party to the strict confinement of Overbury, (an act, doubtless, of cruel persecution,) but that he was no party to his murder. On perusing the confidential letters in question, in connection with the other letters of Northampton set forth in the previous pages of this work, it may, perhaps, be thought that if Northampton and Somerset had been plotting together Overbury's poisoning, the letters would have contained some allusion more close to the business they had at heart than any which is found in them, and that something would have appeared regarding the numerous agents in whose hands they are supposed to have been trusting their lives.

Supposing Overbury murdered, his murder may be accounted for by motives and actions totally independent of the Earl of Somerset. Sir F. Bacon pointed out with considerable eloquence the "*Furies in Women*," which he supposes impelled the Countess's "*stream of hatred*." We know that the Countess had recourse to dark acts before she made a conquest of the Earl, and in order to

win his affections. Her communication with D. Woodes shows that she had been taking means to kill Overbury before his imprisonment, which failed in effect, because either she could not procure the concurrence of the Earl of Somerset, or did not venture to solicit it.

On the other hand, it is very improbable that a person of the Earl of Northampton's knowledge and discretion, and the Earl of Somerset, should, both of them, have confided to the Countess the whole business of the procurement of the persons and the employment of the agents, and this during a period of five months. Besides they well knew that the King's principal physician and an apothecary appointed by him were in constant attendance on Overbury; and they even facilitated the access of other physicians. To have gone on for months poisoning in defiance of all these dangers, and in the certain prospect of a coroner's inquest, or certain suspicion, in case one were not summoned, might, perhaps, be reconcilable to the conduct of an infuriated woman, blinded by her passions, but is not conformable to the wariness with which Northampton and Somerset might have been expected to have pursued, if they had designed to poison Overbury.

Neither does Northampton nor Somerset appear to have had any adequate motive for incurring imminent peril of life, after having obtained every object of wealth and power they could reasonably

hope for. Bacon, in a letter to the King, accordingly observes, that the imputation of motives to Somerset was a point of "tenderness;" for the malice, he says, "must have a proportion to the effect of it, which was the empoisonment:" and he intimates, that revenge upon a quarrel with Overbury was not a sufficient foundation of malice; but that it was necessary, further, to surmise that Somerset had grave cause to fear Overbury; but any such cause was purely conjectural.

Both reports of the trial represent the earnest endeavours which were used by the Lord High Steward to induce the Earl of Somerset to make a confession. In the subsequent chapters of this work, the devices practised for this purpose, whilst Somerset was in prison, will appear the most extraordinary that are related to have been ever employed towards a state prisoner in this country. It is known that Somerset stated his belief that, in consequence of having promoted the imprisonment of Overbury, the Peers would in all probability find him guilty of the murder. Nevertheless, in prison he indignantly rejected all promises of favour and pardon however frequently and artfully set before him. At his trial, his reply to the Lord High Steward was, "I am confident in my own cause, and am come here to defend it." After the trial, when the further assertion of his innocence could do him no service, but was extremely likely to exasperate King James, and to close the avenues

of mercy, he protests, in a letter to the King, "I fell rather for want of well defending, than by any violence or force of any proofs."

With regard to the *argumentum ad verecundiam*, that the Peers who tried the Earl of Somerset were more competent to form an opinion upon the subject of his guilt or innocence than ourselves, it may be useful to notice a few particulars concerning the tribunal before which his trial took place*. It was the High Steward's Court, and not the Court of the Peers in Parliament. In the Court of the High Steward that officer was the sole judge of all matters of law: he generally returned, at his own nomination, the Peers Triers; but at the Earl of Somerset's trial, the Privy Council appear to have nominated the Triers. The Peers thus partially selected could not be challenged.

At the trial of the Protector Somerset, three of his most inveterate enemies were selected among the number of his Triers. At the trial of Essex and Southampton, Lord Cobham, the avowed and cordial enemy of Essex, and Lord Grey, whose

* With regard to the previous verdicts of the juries, it should be mentioned that the jury which acquitted Sir N. Throgmorton, were imprisoned for nearly eight months and heavily fined. The practice of punishing juries for their verdicts was not completely abolished till the reign of Charles the Second. Sir W. Raleigh's jury was said to have been changed on the night before his trial. Little credit, therefore, can be due to the verdicts of such packed and intimidated juries.

3. Indolent Sir Juthampton was notorious, and was present at of altercation during the proceedings, sat among the Triers. In a letter from Lord Cornbury to the Duke of Ormonde, he writes that the principal reason of his father, the great Lord Clarendon, withdrawing himself from the kingdom, was on account of his having received information from a very credible quarter, that there was a design to prorogue the Parliament, in order that he might be tried by a select number of Peers who were his enemies. Jeffries summoned no less than six of the great officers of the Crown among the select Peers who tried Lord Delamere*.

Sir F. Bacon, in one of his letters to King James, desires him to be very cautious in the appointment of a High Steward for the Earl of Somerset's trial. Twenty-two Peers were nominated; among them will be found several individuals, holding offices of state, as the Lord Privy Seal, Lord Chamberlain, and the Warden of the Cinque Ports; and, joined with these, the very Peers mentioned by the author of the *Aulicus Coquinariæ* to have assembled at Baynard's Castle for the purpose of ruining Somerset, on which occasion one of their followers threw dirt at a picture of the Earl which was hung out for view at a painter's shop in Fleet Street. There can be little doubt that the select Peers all belonged to

* See the Author's Tract on the Court of the Lord High Steward, annexed to Phillipps's State Trials.

the faction, who expected to rise by Somerset, and that in reality he fell by a . . . swayed by his rival Villiers.

The *Compte de Marests*, the French Ambassador at the Court of London, when the Earl of Somerset was tried, writes concerning the trial to his own Court*: "That certainly the least country gentleman in England would not have suffered for what the Earl of Somerset was condemned, and that, if his enemies had not being powerful, he would not have been found guilty; for there was no convincing proof against him, but only circumstances such as might serve in France for putting him to the question, which was not the custom of England. He expresses his regret at witnessing the Earl delivered into the hands of his enemies."

Sir A. Weldon expresses the following opinion on the subject. "Many believe the Earl of Somerset guilty of Overbury's death, but the most thought him guilty only of the breach of friendship (and that in a high point) by suffering his imprisonment, which was the highway to his murder; and this conjecture I take to be of the soundest opinion."

According to an old memorandum in one of the Losely papers which will be stated at length in a subsequent chapter, it appears to have been the opinion of the son-in-law of Sir George More, the

* See *Depêches du Compte de Marests*.—*Carte's History*, vol. iv., p. 23.

3. Indolent at the Tower who succeeded Helwys, that Somerset was innocent of Overbury's murder; but that he was prosecuted, because "King James was weary of him and Buckingham had supplied his place." He grounds his opinion upon conversations with the Earl of Somerset's chief servant.

The author of the "Annals of King James," published A.D. 1681, writes: "Some that were then at Somerset's trial, and not partial, conceived in conscience, and as himself says to the King, that he fell rather by want of well defending, than by force of proofs."

CHAPTER V.

CONDUCT OF SIR EDWARD COKE IN THE PROCEEDINGS
RELATIVE TO THE GREAT OYER OF POISONING.

THE first important business with regard to the Great Oyer of Poisoning in which Sir Edward Coke was concerned, was that of a Public Prosecutor, in collecting evidence against the prisoners. His employment in this matter exhibits the advantages accruing to a community, when criminal prosecutions are conducted, from their inception to their conclusion, by public functionaries, whose abilities and whose characters may be a guarantee for the satisfactory performance of a duty requiring great discretion, industry, and integrity.

Fielding, in his Tract on the "Causes of the increase of robbers," mentions the encouragement which the spirits of robbers receive from the remissness of prosecutors, whom he classifies in the following manner.

1. Fearful, and to be intimidated by the threats of the gang ; or,
2. Delicate, and cannot appear in a public court ; or,

3. Indolent, and will not give themselves the trouble of a prosecution ; or,

4. Avaricious, and will not undergo the expence of it ; nay, perhaps, find their account in compounding the matter ; or,

5. Tender-hearted, and cannot take away the life of a man ; or,

Lastly, Necessitous, and cannot really afford the cost, however small, together with the loss of time which attends it.

Fielding might have mentioned, among the encouragements to crime, the chances of escape from the ignorance or negligence of the persons who prepare criminal cases for trial, and who are not responsible to the public for the injuries thus occasioned to society. And besides impunity for crimes arising from the want of a Minister of Justice or Public Prosecutor, greater evils not unfrequently occur, which it would be the duty of such an officer to prevent, and which arise from the urging on of frivolous or vexatious prosecutions, sometimes from an injudicious zeal for public justice, sometimes under the cloak of law, for the gratification of malice, or the acquisition of lucre.

In the prosecutions for the murder of Sir T. Overbury, we find, according to a letter of Sir E. Coke, that persons flocked to him for the purpose of communicating all they knew upon the subject, because they felt at no loss where to go, in order

that their testimony might be listened to and recorded. We find also the feeling of responsibility in a high Officer of Justice, with regard to the performance of an important public trust, productive of its natural result, extraordinary efforts of assiduity and vigilance; and we find, owing to the employment of an individual of eminent talents and great legal experience in conducting the preliminary details of a public prosecution, that consummate skill was displayed in taking care that no link which industry could supply in the chain of legal evidence should be wanting against the day when its relevancy and sufficiency was to be submitted to a public ordeal; and when the Public Prosecutor himself should be put on his trial, whether he had duly discharged his important functions.

Sir F. Bacon, whose efforts to disparage Sir E. Coke, and to supplant him in the favour of his Sovereign are apparent in many of his own letters, nevertheless says of his rival, with reference to the Great Oyer of Poisoning, "Afterwards it was referred to Sir E. Coke, Chief Justice of the King's Bench, as a person best practised in legal examinations, who took a great deal of indefatigable pains in it, without intermission, having, as I have heard him say, taken at least three hundred examinations in this business." And again, "The Lord Chief Justice's name thus occurring, I cannot pass it by, and yet I cannot

skill to flatter. But this I will say of him, and I would say as much to ages, if I should write a story; that never man's person and his place were better met in a business, than my Lord Coke and my Lord Chief Justice, in the case of Overbury."

In the third chapter of this work, it will have been observed how many of examinations in the State Paper Office are in the handwriting of Sir E. Coke. In those documents he chiefly appears as a recorder of what was stated by witnesses or prisoners: They indicate patient industry, and a zeal for accumulating proof which disclaimed no mental drudgery nor even manual labour. The papers contained in the present chapter, which are chiefly of a private nature, are indicative of the acute cogitations of his mind, of his powers of moulding evidence to answer the requisitions of an hypothesis, and of his shrewd suggestions regarding the probabilities of human conduct under a variety of circumstances.

After collecting and marshallling the evidence preparatory to the trials, the next public proceeding in which Sir Edward Coke was engaged, was the arraignment of Weston (Overbury's gaoler), which took place on the 19th of October, A.D. 1615. And here the reflection occurs, that a Public Prosecutor is a very improper person to sit as Judge upon the trial of any individual

against whom he has (to speak technically,) *got up* the evidence for the prosecution. It is difficult for him not to regard the fruits of his zeal and industry and skill with something of a parental eye, and to treat, with feelings of resentment, any reflections upon them, tending to impugn their probative force, or, still more, to impeach their genuineness or credibility. A person who is anxiously collecting written evidence such as may square with a particular train of reasoning, will be too apt, even if he mean to act impartially, to warp it to his own purpose, just as Procrustes used to shorten or lengthen the limbs of all strangers who fell into his power, so as to fit them to the size of a particular bed. The necessity that depositions, examinations, and confessions so obtained should be subjected to a scrutinizing and impartial review will be admitted. How peculiarly, then, was it improper that Sir E. Coke, the Chief Justice, should preside at any inquiry on the credibility of documents which had been prepared by the same Sir Edward Coke, acting in the capacity of Public Prosecutor. For it must be recollected that these judicial papers were mostly in his own handwriting, and purported to contain statements of what had passed between him and the witnesses or prisoners, when no public was present; but when the rack was at hand to be called for, if it was thought necessary that a

prisoner should utter what was deemed advisable should appear on paper as the result of his examination*.

Without imputing to Sir E. Coke, that, like Sir F. Bacon, he did not “skill of scruples” of duty or conscience, when it was a question of gratifying King James, (for on some occasions he opposed the arbitrary will of that King, and made a memorable resistance to the tyranny of his son, Charles I.), yet it will not be uncandid to suppose, that his conduct as a Judge might have been in some measure influenced by his previous occupation of Public Prosecutor. His pre-eminent reputation as a lawyer was to be maintained on a conspicuous theatre, to the scenes of which the attention of the whole nation was directed. And he was powerfully stimulated to make it manifest to his Sovereign and the public, that the days and nights he had devoted to the investigation of the murder of Sir T. Overbury, had not only been laboriously and judiciously, but also successfully occupied. Nor, as we have seen, did his anxiety on the subject cease with the trials of the prisoners, but his atten-

* It has been mentioned, in the last chapter, that Coke states it as a proof of “the honour and reverence which the law gives to *nobility*, that *their* bodies are not subject to torture.” In several of the prosecutions which Coke conducted as Attorney-General, the rack was unquestionably used; and his name appears in various commissions authorising the use of it: as in Peacock’s case, *Archæol.*, vol. x., 143, and in that of Guido Fawkes, whose signature Sir E. Coke attests, and yet the same Sir E. Coke, in his writings, inveighs strongly against the practice of torture as repugnant to *Magna Charta*.

tion hung, in a manner, on their lips so long as what they uttered could have any effect even upon what Sir F. Bacon calls "the world at Tyburn."

In charging the Grand Jury upon the trial of Weston, Sir Edward Coke made the following observations. He declared, "that of all felonies murder is the most horrible; of all murders poisoning is the most detestable; and, of all poisonings, the lingering poison." He descanted to the Jury on the "baseness and cowardice of poisoners, who attempt that secretly against which there is no means of preservation or defence for a man's life; and how rare it was to hear of poisoning in England, so detestable it was to our nation: But that now the Devil had taught divers to be cunning in it, so that they can poison in what distance of time they please." Thus he assumes the efficacy of slow poisons, and inflames the minds of the Jury and the public against the prisoners, by expatiating on the heinousness of the offence with which they were charged. Whereas the Jury required to be cautioned, lest their antipathy to the crime of poisoning should render them unscrupulous concerning the proof of it.

The speech of a Judge in charging a Grand Jury is of much greater importance than it may seem to be with reference to its immediate object. For it is heard by the public present in Court, and it makes an impression, by anticipation, on the minds of the very persons who afterwards act in

the capacity of Petty-Jurymen. Judges have, on too many occasions, omitted to consider the responsibility they incur by prejudicing Juries in this way. In some instances they may appear to have seized with avidity on the opportunity thus afforded them of taking an unfair advantage of prisoners, who, in their dungeons, heard nothing of the harangues likely to operate, in a manner most prejudicial to them upon their trials. Sir E. Coke's address to the Grand Jury in the "Great Oyer of Poisoning," may be thought to be liable to this impeachment.

The following extract from the charge of Sir Orlando Bridgman to the Grand Jury on the trials of the Regicides will show to what extent this opportunity for declamation may be abused. "You are now to inquire of blood, of royal blood, of sacred blood, blood like that of the saints under the altar, saying, 'Quousque Domine.' 'How long O Lord!' This blood cries for vengeance, and it will not be appeased without a bloody sacrifice. This I will say, that he that conceals or favors the guilt of blood, takes it upon himself, wilfully, knowingly takes it upon himself; and we know that when the Jews said, 'Let his blood be on us and our seed,' it continued to them and their posterity to this day."

Weston, having, in the first instance, refused to plead, Sir E. Coke "plainly delivered his opinion, that he was persuaded that Weston had been dealt

withal by *some great ones*, guilty of the same fact, as accessory, to stand mute, whereby they might escape their punishment."

Notwithstanding Weston had not yet pleaded, and the proceedings were to be adjourned, in order to afford opportunity for working upon Weston's mind in such ways as might induce him to plead, Sir E. Coke took this extraordinary course. He "willed Sir Lawrence Hyde, the Queen's Attorney, and those of counsel for the King, to manifest unto the audience the guiltiness of the said Weston by his own confession, signed with his own hand; and, if in the declaration thereof, they may meet with *any great persons whatsoever*, as *certainly there were great ones* confederate in that fact, he should boldly and faithfully open whatsoever was necessary, and he could prove against them."

Accordingly Sir Lawrence Hyde opened the whole evidence against Weston before he had pleaded. And he was allowed, if not encouraged by Sir E. Coke, to call the marriage of the Earl and Countess of Somerset "an adulterous marriage," and to say that the Countess was a "dead and rotten branch, which being lopt off, that noble tree (meaning the family of Howard) would prosper the better." Another of the King's counsel, Mr. Warre, in allusion to Somerset, said, "*Pereat unus, ne pereant omnes, pereat peccans, ne pereat respublicâ.*"

After the evidence against Weston had been

gone through, the Court was adjourned from the 19th to the 23rd of October. On this latter day Weston pleaded *Not Guilty*; and, thereupon, the evidence was opened and proceeded with precisely as on the preceding day.

Sir E. Coke, upon Weston being found guilty, before he pronounced sentence of death, spoke to this effect:—

That for the duty of the place, he must say somewhat; and that to two several persons: First, to the *auditory*: and, secondly, to the prisoner.

And that which he spake to the auditory, he divided into four parts: 1st, The manifestation of the glory of God, and honour of the king. 2dly, The preventing of other damned crimes of poisoning. 3dly, An answer to certain objections. 4thly, That there is no practice of conspiracy in prosecuting of the business.

For the 1st, he observed the finger of God in the manifestation and bringing to light of this matter, having slept two years, being *shadowed with greatness*, which cannot overcome the cry of the people.

He observed also the providence and goodness of *God*, who *put into the hearts of himself*, and the rest of the judges, the day of the prisoner's last arraignment, when he stood mute, not to give judgment against him for that time, but defer it till now; and how in the mean time it pleased his majesty out of his gracious care and pity, to send to the prisoner first the bishop of London, next the bishop of Ely, to admonish and persuade him for the saving of his soul; who, after each of them had spent two hours with him, it pleased God (when they had left him) to move his heart, so that now he did not put himself to be tried by the country; by which means (using Weston's own words) he said, the great flies shall not escape, but shall receive their

punishment. For conclusion of his first point he lastly observed, "Divinum quiddam in vulgi opinione," that notwithstanding so many uncertain rumours touching this case, at last it proved to be true.

2dly, He declared, how for prevention of this damned crime of poisoning, justice was the golden mean, and declared his majesty's resolution straightly to execute justice for that treason; and he used this saying, "Nemo prudens," &c. and desired God that this precedent of Overbury might be an example and terror against this horrible crime, and therefore it might be called, "The great Oyer of poisoning."

3dly, He said that at the arraignment there were certain critics, who had given out, the prisoner should deny his examinations; and found much fault, for that the examinations were read, the prisoner standing mute. But for the first, how untrue it was, all the world saw, the prisoner here confessing them all, being read and shewed unto him; and for the second, beside that it was exceeding discreet and convenient the world should receive some satisfaction in a cause of that nature, he cited and shewed, that by the laws of the land they ought and were bound to do so, *notwithstanding the greatness of any*, who might thereby be impeached; of whom he said, although this was "unum crimen," yet it was not "unicum crimen."

4thly, As touching the supposed practice or conspiracy, he solemnly protested to God, he knew of none, nor of any semblance or colour thereof; and therefore he much inveighed against the baseness and unworthiness of such as went about so untruly and wickedly to slander the course of justice. And so he came, last of all, to that which he had to speak of Weston the prisoner.

First, touching the wickedness of his fact, he very seriously exhorted him to an unfeigned confession and contrition for the same, declaring unto him how that his confession would be a satisfaction to God and the world, and that

by his faith and true repentance he would lay hold upon the merits of his Saviour.

He persuaded him that no vain hope (which is a witch) should keep him back from giving satisfaction to the world, by *discovering the guiltiness of the great ones*; assuring him, that after this life, as death left him, so judgment should find him.

And lastly, taking occasion there to remember this poisoning to have been a *popish* trick, which he instanced by examples of one Gurnandus de Burlanus; mentioned 22 Edw. 1. Squier, that attempted to poison queen Elizabeth's saddle; Lopez, and Mrs. Turner: he then proceeded to give judgment, which was,

That the prisoner should be carried from thence to the place from whence he came, and from thence to Tyburn, and there to be hanged by the neck till he was dead.

Judgment being given, the lord chief justice commanded that the prisoner might have convenient respite, and the company of some godly learned men to instruct him for his soul's health.

The two following documents now published from the records of the State Paper Office, relate to Weston's trial: the first is a letter in Sir E. Coke's handwriting, in which are detailed the circumstances of Weston's first arraignment.

MOST GRACIOUS SOVEREIGN,

By force of your Majesty's Commission of oyer and terminer, we your Judges of your Majesty's Bench, with many other assembled this present Thursday, at the Guildhall in London, in the presence of a great number of Your Maj^{ty}'s Subjects, where after the Commissⁿ read, a great Inquest of 19 grave valuable and understanding Citizens was returned and sworn, we having not seen within the City a more substantial grand Jury, who upon

evidence given unto them, and upon deliberate consideration about an hour and a half without any contradiction with one voice indicted Rich^d Weston of willful murder and poisoning of Sir Thomas Overbury. Whereupon the Delinquent was arraigned and for a show pleaded not guilty, but refused to put himself upon the Country, as the Law required, and therefore in Law stood mute. And albeit we and others did Christianly, and earnestly often exhort him to put himself upon a lawful trial, as he ought, and not to be author of his own death, and to suffer the extreme torment of pressing, if the judgment of law should be strictly observed, yet he very obstinately refused to yield to it. Whereupon we thought meet, as well to inform our consciences, as to *satisfy the multitude* (some of the Nobility and many Gentlemen of great quality being there present) to have openly and at large read the Confessions of the said Richard Weston, and the testimonies of others as well concerning the fact of the said Richard Weston, as the Earl of Somersett, and the Countess and M^{rs} Turner, *without sparing of any of them*, or omitting any thing material against them (the necessity and course of the evidence requiring it, for that it appeared thereby, that the said Richard Weston was procured and waged by some of them) to the *great satisfaction of the Auditory* (which we might well discern by their gestures) and to the great honor of your Majty for Your *princely zeal to Justice*.

We are verily persuaded, that this wicked fellow had been instructed by some evil counsel, that, he pleading, as he did, though he be executed, yet the accessories cannot by any ordinary course of Justice be proceeded withall (as indeed they cannot) but must be left to a Parliament. We have adjourned the Commission until Monday next at two of the clock and in the mean time some good preachers are to be assigned unto him to reclaim him, if it please God to give him grace; and

in the mean time we have taken order, that his hands and feet shall be *manacled*, so as he shall neither hurt himself nor escape.

Upon reading of the examinations subscribed by himself he could deny none of them, and confessed that he had been mildly and temperately dealt withall. If he shall persist in his contumacy, we most humbly desire your Majesty's *directions*, whether we shall proceed in judgment & execution against him on Monday or no; and if we shall, whether it be not your Majesty's pleasure he shall be executed according to the Judgment of the Law. And I, your Chief Justice (albeit I had no warrant therefore) was bold in manifestation of your Majesty's zeal to Justice to publish your Majesty's prim and pertinent direction and interrogatories written with your *own grand hand*, for the finding out of this foul fact, which (as the sequel shows) had an extraordinary blessing of God, and which very many desired to see. And I your Chief Justice did further remember the famous and worthy example of the Lord Sanquer. And albeit your Majesty had highly advanced out of your Princely favor the now Earl of Somersett to great dignities and estate, yet your Majesty out of your respect to Justice suffered the course of Law to proceed against him, and that he was justly committed to the Dean of Westminster's house, under the safe custody of Sir Oliver St John, and the Countess also restrained of her liberty.

But we all certify your Majesty that in the carriage of the whole cause there appeared not to us any shadow or spark of *conspiracy*, combination or plot to scandalize or lay an aspersion upon any, but that the proceeding had been just, orderly, and honorable. And with what great applause your Majesty's *Princely zeal of Justice* therein was of all the hearers accepted, it much rejoiced our hearts to behold. And we shall continually pray to the Almighty for your Majesty in all prosperous and happy

estate long to continue. 19 Oct: 1615 at nine of the clock.

Your Majty's most humble and faithful subjects
and servants,

EDW: COKE. FO: CROKE. JO: DODDRIDG.

ROB. HOUGHTON.

To the King's most Excellent Majesty.

[Indorsed] from Mylord Chief Justice and the Judges
of the Bench to his Majesty*.

The next document regarding Weston, is a letter to the King in Sir E. Coke's handwriting, detailing the circumstances of Weston's trial, after he had pleaded Not Guilty. The means whereby Weston was induced to change his mind, are here ascribed to the instigation of the Holy Ghost. A delusive promise of pardon is a more probable solution of the enigma. It is very likely that Weston refused to plead, in the hopes that, in order to proceed against Somerset as an accessory, a pardon would be offered him if he pleaded. It is less probable, that for the purpose of saving Somerset, he would ever have thought of enduring the *peine forte et dure*†.

* State-Paper Papers, Domestic Office, 1615, Oct. 19, No. 212.

† The judgment of the *peine forte et dure* was abolished only so lately as by the 12th George the Third, ch. 20. It appears from the Sessions Papers, that in the time of Queen Anne, it was usual to tie the thumbs of prisoners together in order to make them plead. A prisoner was pressed to death for not pleading in the reign of George the Second. It is related, that a person who had killed his wife in a fit of jealousy, and thrown two of his children from the top of his house, was about to kill his only remaining child, when a sudden flash of lightning awakened

Most Gracious Sovereign,

I, your Chief Justice, do in most humble manner inform your Majty, that according to your Majty's most Princely and Christian consideration and care to save Richard Weston's soul, the Bishop of London on Saturday last, and the Bishop of Ely on Sunday spent a long time with him, using all the strength and *fire* of persuasion they could, and yet to their seeming profited nothing, but left him obstinate and undurate. The Bishop of Ely offered him to fetch any Jesuit or priest out of some of the prisons, who would (as he assured himself) come with him in the grounds of his perswasion, to whom he answered, that if the Bishop of London and the Bishop of Ely could not perswade him, neither Jesuit nor priest should do it. But yesterday morning, upon speech with the Sheriff's servant, (by the *instance of the Holy Ghost*,) he offered to put himself upon the country, and when he had affirmed so much to the Sheriff, (who had dealt *honestly* in the cause,) he said withall, I hope they do not make a net to catch the little fishes as flies and let the great go.

According to our Commission, and your Majty's direction, yesterday we proceeded against him, who willingly put himself upon God and the country, and thereupon a very substantial and understanding Jury was returned and sworn; all the confessions and testimonies were read distinctly and planely, and he openly and freely acknowledged all his confessions to be subscribed by his mark, and that they were all true, and were taken with mildeness and gentle means without any threatning and hard words.

remorse in his bosom. He suffered himself to be pressed to death, in order to preserve his estate for his surviving child, which would have been forfeited, had he pleaded and been convicted. It was probably with a view to secure forfeitures, that the punishment of the *peine forte et dure* was made so exerceiating. Blackstone, the eulogist of ancient practices, writes, that the punishment "was purposely ordained to be exquisitely severe in order that it might rarely be put in execution."

After the evidence given for your Maj^{ty}, the prisoner was patiently heard as long as he would speak, and in the end being demanded if he would speak any more, & if he would he should be heard, he openly acknowledged his said former words, viz^t: I hope they do not make a net to catch the little fishes as flies and let the great go, and said he could say no more. Whereupon the Jury departed from the Bar, and after a mature time of deliberation they returned and with one consent found him Guilty. Whereupon Judgm^t is given, and execution awarded, and in the mean time especial care is commanded to be taken for the *saving of his soul*. And this is the true manner and order of our proceeding. What a multitude were present, how they were satisfied, and how your *Majesty's Justice* was applauded, we leave it to the report of others. And we according to our most bounden duty shall ever pray to the Almighty for your Maj^{ty} in all prosperous and happy state long to continue. From Sergeant's Inn this present Tuesday morning the 24th of October.

Your Majesty's most humble subjects and servants,

EDW. COKE.

JO. CROKS.

JO. DODDRIDG.

ROB. HOUGHTON.

To the King's most excellent Majesty.

[Indorsed] From Mylord Coke & the Judges of the Bench to his Maj^{ty}.

The following is a letter in King James's handwriting, addressed to Sir E. Coke, on the subject of Weston's trial. The parts in italics are interlineations upon erasures.

LD. CHIEF JUSTICE COKE.

Right trusty and welbeloved Councillor. Trusty and welbeloved we greet you well. We have received your

* State-Paper Office, Domestic Papers, 1615, Oct. 24, No. 234.

letter of the 19th of this Month, wherein you give us a large account to our good satisfaction of your late proceedings with Weston; which they give us cause to be most heartily sorry that the *least touch* of so foul a fact should fall upon *the honor and reputation of any one that holdeth* so near a place about our person, so do we give God thanks and withall commend your industry and endeavours that the truth is discovered, that thereby so heinous and wicked an offence may receive in due time condigne and exemplary punishment. We have great reason to approve as we do the moderation and discretion which you have used in the whole course of your proceedings agst Weston towards whom we require you even in Christian charity to imploy your best endeavours, both by sending able and worthy preachers to him and by your own exhortations to make him sensible of the danger of his soule if he shall persist in this contumary, not to submit himself to the Trial of the Law; but if you shall find him still to continue stubborn and obstinate, which God forbid, then we do require you without delay to proceed to Judgment which our will and pleasure is should punctually be executed, according to the strictness and rigour of the Law, whereof you are before to forewarn him; for why should pity be taken of the body of that Man who for want of Grace hath no commiseration of his own soul. And because we *concurr in opinion with you* that Weston having neither Lands nor goods to lose, by practice hath bin wrought to this obstinacy, perhaps upon this sinister suggestion that the Accessory cannot be called in question unless the principal be first condemned, we do require you our Chief Justice and the Lords who are joined in Commission with you to examine Weston himself if no Man hath practised with him *before whose arraignment on Monday next you may likewise examine all other parties agst whom you may conceive just suspition, namely the Earl of Somerset and the Lady his wife, whom on like manner you*

are to examine on those points mentioned in the former letters of the Commissioners in this particular: You may remonstrate unto them how unworthy a thing it is in the state they now stand, to heap sin upon sin and to charge their consciences with the apparent danger of the damning of the soul of that miserable wretch, who as he hath bin the Murderer of another, so now will be the Murderer of himself; whereby let them know they can little relieve themselves, if they shall be found guilty for which we profess we shall be heartily sorry. This being our resolution to use all Lawful courses that the foulness of this fact be sounded to the depth; that for the discharge of our duty, both to God and Man, the Innocent may be cleared, and the nocent, as the nature of the offence shall deserve, may severely be punished.

To our Right trusty and welbeloved Councillor Sir Edw. Cooke kn^t our Chief Justice of England, and to Our trusty and welbeloved the Judges of Our Bench.

In the proceedings against Weston, the reader will have noticed the close correspondence kept up between King James and his Judges, upon the subject of the great Oyer; and, in particular, the circumstance that the King's directions are "most humbly desired, whether the Judges shall proceed in judgment and execution on Monday or no; and if they shall, whether it be not his Majesty's pleasure he shall be executed according to the judgment of the law." In Sir E. Coke's better moments he protested against all *auricular* (as he termed it,) communications made to a Judge when

* State-Paper Office, Dom. Jac. 1, vol. lviii., 1615, Oct. 20, No. 213, 2 4, and 215.

the party affected by them, and the public, were not present; and, in his retirement from active life, he writes, that the Judges of England are judges of public tribunals, and not of private closets.

Sir E. Coke's defence of his order for reading the depositions against Weston before he had pleaded to his indictment, is very unsatisfactory. This proceeding appears to be one of the most irregular and unfair that is recorded in the history of the English law. So far from its being "exceeding discreet and convenient" that public curiosity should be satisfied a few days earlier than would otherwise happen, to the manifest prejudice of a prisoner arraigned upon a capital charge, the course pursued by Sir E. Coke must appear most indiscreet, most inconvenient and most unjust. Sir E. Coke, it will be observed, attempts to hide the weakness of his own vindication under a popular flourish, that he was bound to adopt the course objected to, "notwithstanding the greatness of any who might thereby be impeached, for that although this was *unum crimen*, it was not *unicum crimen*," as though the only objection to reading the evidence had been that it affected the Earl of Somerset. His speech illustrates the well-known sophism of *Ignoratio elenchi*, or "mistaking the question;" for he endeavours to divert the minds of the auditory from the real question, whether it be fair to publish the evidence collected against an indi-

vidual before that individual is put upon his trial, by a clap-trap sentiment, that in administering justice there is no respect of persons.

It will have been observed that, at Weston's trial, Sir E. Coke excites, and instigates others to excite popular indignation against the Earl and Countess of Somerset, although they were not upon their trials; and beseeches Weston, after his conviction, to "give satisfaction to the world by discovering the guiltiness of the great ones:" advice which might naturally be interpreted by Weston as a hint, that he would have some prospect of a pardon if he made statements implicating those "*great ones*."

After Weston's execution, on the 10th of November, A.D. 1615, the information was preferred by Sir F. Bacon, in the Star Chamber, against Sir J. Hollis, Sir J. Wentworth, and Mr. Lumsden, which has been adverted to in a previous chapter. The two former defendants were charged with asking questions of Weston at Tyburn, as to whether the confessions ascribed to him were true or not? and further, Sir J. Hollis was accused of having said at Weston's trial, that "if he were one of the Jury, he should doubt what to do." The charge against Mr. Lumsden was, that between the day of Weston's standing mute, and that of his trial, he addressed in writing a representation to the King, reflecting upon the conduct of Sir E. Coke, in publishing the evidence against a prisoner

before his trial, and had entrusted this memorial to an officer of the Bed Chamber, to be delivered into the King's hands; a transaction facetiously termed by Sir F. Bacon, with reference to the poisoning of Overbury, an "empoisonment of the King's ear."

Sir E. Coke pronounced the sentence of the Court against these three offenders; and, he remarked, that "He that infuseth into his Majesty's ears the least falsehood concerning his Judges unjustly, is like him who infuseth never so little copper into coin: they both commit a kind of treason."

Addressing Mr. Lumsden, he said, "You were a pander to the Earl of Somerset, and were his *favourer* in deed, but his *follower* in evil." He took occasion to mention, that he never attended executions himself, ever since he read in Ovid,

Et lupus, et vulpes instant morientibus—
Et quæcunque minor nobilitate fera est,

And he asked Sir J. Hollis,

Et quæ tanta fuit Tyburn tibi causa videndi?

He affirmed, of his own conduct, throughout the Overbury trials, that he could say, as Abimelech said of himself, "Tu scis, Domini, quod feci, in simplicitate cordis et munditie manuum;" and he concluded, by wishing "Gentlemen to take heed how they fell into discourses of these businesses, when they be at their chambers; for in the proceeding of these great businesses and affairs, if a

man speak irreverently of the justice thereof, the *bird* that hath wings will reveal it.”

The sentence was fine, imprisonment, and submission, as follows :

Lumsden was fined 2000 marks, and imprisoned in the Tower for a year ; and further, until he should, at the King's Bench bar, submit himself, and confess his fault, and also produce his authors. Sir J. Hollis was fined £1000, and imprisoned in the Tower for the space of a year. Sir J. Wentworth was fined 1000 marks, and imprisoned in the Tower for the space of a year.

Our judicial annals happily do not present any other case in which the first principles of justice have been so flagrantly violated as in this instance, in which we find Sir E. Coke giving judgment in what was emphatically his own cause. It is not to be wondered at that he should have designated a complaint made of his own official conduct, a “kind of treason.” But the sentencing Mr. Lumsden to make a submission for this offence, before himself sitting at Westminster, might have been thought revolting to any mind capable of regarding any consideration but the impulses of its own passions.

The only occurrence in our State Trials at all similar to the conduct of Sir E. Coke in this proceeding, is that of Ch. J. Scroggs, in the reign of Charles II., who bound over Richard Radley to appear before the Court of King's Bench for having

said to one Robert Raylett, "If you think to have the money yon have overthrown me in, you may go to my Lord Scroggs, for he has received money enough of Dr. Wakeman for his acquittal." Scroggs's speech on the occasion of Radley being brought before the King's Bench, is reported in Howell's State Trials; a fine of 200*l.* was imposed.

There were several libels against Scroggs, for which the writers were punished; and Scroggs was afterwards impeached for the very judgments which were the subjects of the libels. In like manner a person was punished in the Star Chamber for imputing corruption to Lord Bacon, for which very crime Bacon was afterwards impeached. In the case of one Franklin, Ch. J. Holt said to a Counsel, "You must not be afraid of scandals; Dyer (the news-writer) is very familiar with me, too, sometimes, but you need not fear such a little scandalous paper of such a scandalous author." Mr. Clifford, in the trial of White and Hart, notices that the imagination of Shakespeare makes Wolsey say, when accused of malversation,

If I am

Traduced by ignorant tongues—which neither know
My faculties nor person, yet will be
The chronicles of my doing—let me say
'Tis but the fate of place; and the rough brake
That virtue must go through.

He observes, "The imagination of Shakespeare did not go to an information or indictment; but it is extraordinary that the workings of the ima-

gination of Shakespeare should have been in unison with that which has been the practice of all the Judges since the Revolution, and of all before, except those who had been guilty of the crimes they wished to screen."

The trial of Mrs. Turner took place on the 7th of November, A. D. 1615. It appears that, before the jury retired to consider their verdict, Sir E. Coke told Mrs. Turner that "she had the seven deadly sins, viz., a whore, a bawd, a sorcerer, a witch, a papist, a felon, a murderer, the daughter of the Devil Forman; wishing her to repent, and become a Servant of Jesus Christ, and to pray to him to cast out of her those seven Devils."

Any Judge who, in the present day, should address a prisoner, before the jury had retired to consider their verdict, in such language as that used by Sir E. Coke to Mrs. Turner, would justly be driven from the Bench by a Parliamentary Impeachment. Such language was manifestly a dictation to the jury calculated very unfairly to prejudice their verdict: especially so, considering that it was very usual, before the time of the Commonwealth, to fine juries for their verdicts. Thus, in Wharton's case, reported by Yelverton, it is said, "Upon this indictment all the parties above were found 'Not guilty,' whereupon Popham, Gaudy, and Fenner, *fuereunt valde irati*, and all the jurors committed, and fined, and bound to their good behaviour."

The next trial occurred on the 16th of November, A.D. 1615. It was that of Sir G. Helwysse. Sir Gervase, in his defence, makes the following complaints of his treatment by Sir Edward Coke.

My lord; before I answer to the matter of charge against me, let me remember your lordship of one speech which I learned from your mouth: I have heard you speak of it at the council-table, and you have delivered it at the assizes in the country, That when a prisoner stands at the bar for his life, comfortless, allowed no counsel, but strong counsel against him, perchance affrighted with the fear of death, his wife and children to be cast forth out of doors, and made to seek their bread; you have always pitied the cause of such a one: You have protested you had rather hang in hell for mercy to such a one, than for judgment. My lord, you have not observed your own rule in my cause; you have paraphrased upon every examination, you have aggravated every evidence, and applied it to me, so that I stand clearly condemned before I am found guilty: If I be so vile a man as your lordship conceives me, I were unworthy of any favour; but I hope your lordship shall not find it.

After Sir Gervase Helwysse had concluded his defence, Sir E. Coke drew from his bosom a remarkable document, the reading of which he prefaced in the following theatrical manner.

It is not your deep protestations, nor your appealing to God, that can sway a jury from their evidence, which is not yet answered unto. But to leave you without excuse, and to make the matter as clear as may be, here is the Confession of Franklin, (which he then drew out of his bosom) saying, This poor man, not knowing sir Jervis

should come to his trial, this morning he came unto me at five o'clock, and told me, that he was much troubled in his conscience, and could not rest all that night until he had made his confession; and it is such a one (these were his words) as the eye of England never saw, nor the ear of Christendom never heard.

In the whole history of our State Trials, there is, perhaps, no instance of such an unfair mode of adducing evidence as that which is here related. In other chapters of this work, the suspicions attaching to this particular examination of Franklin, and the imputations on the general credibility of the alleged confessions of that villain, have been adverted to. Whatever weight may be due to the objections to which Franklin's evidence is liable, and whatever opinion may be formed on the conduct of Sir E. Coke in saying what he said in recommendation of it, it is conceived that no excuse can be offered for the unworthy artifice of withholding the examination until the moment when Sir Gervase had concluded his defence. It can scarcely be doubted that the object of the Chief Justice in keeping the examination *in his bosom* so long, was that the dramatic manner of its production might impose on the minds of an illiterate Jury; whilst the prisoner, taken by surprise, would be less competent to review the rest of the evidence in connection with the most important document in the case, to which he would

be called upon to give an immediate answer, after, probably, he was exhausted by the effort requisite for his speech.

Of Franklin's trial, which took place on the 27th of November, A.D. 1615, only a very short report is extant: It appears that, after sentence was passed upon him, Sir E. Coke "made a short exhortation, with addition of these words; that knowing as much as he knew, if this had not been found out, neither the court, city, nor any particular family had escaped the malice of this wicked cruelty." The obvious tendency of such an inflammatory speech, for which there do not appear to have been any grounds, and which certainly nothing was produced at any of the trials to warrant, must have been to kindle public resentment against the prisoners who remained to be tried, by making every person of the audience suppose that his own family had been in danger of being poisoned.

The following documents in the State Paper Office relate to the prisoner Franklin. The first is a letter to the King, in Sir E. Coke's handwriting, detailing the particulars of Franklin's arraignment. The reader will remark what Sir E. Coke writes as to the zeal of witnesses in resorting to him, on account of his *willingness* to receive their testimony; and as to the *pressing* of Franklin's *conscience*, after his conviction; and as to the improbability of Franklin being admitted, as he related,

to the Countess's bedside, a fact which was not mentioned at the trial.

MAY IT PLEASE YOUR EXCELL^t MAJ^{ty},

This day was convicted and attained James Franklyn physician for being accessory before the fact done, for the poisoning of Sir Tho^s. Overbury upon such plain and luculent proofs as all the hearers were satisfied.

He was not proceeded withal until he had discovered sufficient matter against the Earl of Sommerset, and that I had fortified his testimony, by other witnesses, which by Gods providence I attained unto. For even as to a common fire every man endeavours himself to quench it, so to this powder poison, that threatens a common danger, every man is ready to testify what he knows or hears. And that the rather for that, *they know a certain place to resort into, and to find one willing to sift out the truth* without all respect of persons. It falls now out by proof, that after that Franklyn had provided the poison, they first tried two of them upon a Cat, which made the Cat in such extremity for two days, wailing and mewling (for so they speak) as it would have grieved any to have heard her, and so died. Whereupon the Countess sent for Franklyn and told him that the poisons were too strong, and said, that they must be so prepared as to lay longer in the body, before they should kill. I have found out also that the party that brought the salt and sugar to the Countess that were poisoned with the white powder called arsenick. It is also proved and confessed that as soon as Weston was apprehended the Earl of Sommerset came to the Countess laying then at the Cockpit one evening, and thereupon Franklyn was presently sent for about ten of the clock at night, being then in bed, who presently came; and the first words the Countess spoke to him was, what now Franklyn? we shall all be hanged, for Weston hath been sent for by a pursuivant, and he hath confessed all,

but upon your life Franklyn as you have sworn before, so swear again, and so he did (but not upon a book as before he had done) never to confess that you did bring to me or to Mrs. Turner any poison, for (said the Countess) Franklyn, if you confess, you are sure to be hanged, and by God if you confess, you shall be hanged for me, for I will not be hanged. With that Mrs. Turner said: no Madam, I will be hanged for you both, and thereupon the Countess went out to him ettc. that was in the next chamber and brought these instructions from him, viz., that Franklyn should deny that ever he spoke with the Countess, though he had so done an hundred times; and that he should say that he came always to Mrs. Turner for phisick, and about going to cunning Men and such like idle business.

And happy it is that Weston was taken when he was, for it was plotted to have poisoned both him and Franklyn, but by the goodness of God they avoided it.

And the Countess finding fault with Weston, that he had not given Overbury poison enough, Weston said that he had given him as much as would have *killed twenty men*; now forasmuch as he charges the Earl in such direct and particular manner, he was demanded openly at the Barr, whether his examinations then showed to him taken before me and subscribed with his own hand were not true, which openly and clearly he confessed to be true divers times. It is strange that such a wicked fellow and that (upon good proof) had *luem veneriam sive morbum Gallicum*, should be admitted to the Countess bedside, as both, Franklyn and the Groom of the Chamber have prooved.

It was proved to his face, that he had been in divers places to enquire out the strongest poison, and being rebuked to deal with such things and admonished to think of God, he most blasphemously answered, let them think of God that care for him, for I have great personages that will bear me out in what I do, and can have favor at Mylord of Somersetts hands. _

And it was also proved that he confessed that he had a *wicked spirit at his commandement* and when he was once sick, he would gladly have been ridd of him and offered to set him over to another.

As soon as he was condemned, and returned to close prison I sent a grave and learned Divine to him who had been with all the other prisoners, with instructions to *press his conscience* in divers particulars as well in this as in other poisonings, wherein no industry or care shall fail to find any further matter.

I humble beseech your Maj^{ty} to pardon me in that I express not particulars against any that shall be hereafter arraigned, for evidences loose a great part of their force, if they be evident or known before the trial. I have conferred with my bretheren of the King's Bench, and upon consideration had, of all the parts of this case, we think it fit, that the Earl should not be tried before the Countess, for that the one has a dependance upon the other. On Thursday next we proceede against Sir Thomas Mounson, and would require the Sheriffs to return a substantial indifferent and understanding writ, for unto them the matters of fact must be left. And so giving thanks to Almighty God for the *honor of your justice* hitherto, and that upon every arraignment the commitement of the Earl to the Tower is so absolutely justified. I shall continually offer up my prayers to the Almighty for your Maj^{ty} in all health safety and happiness long to reign over us.

From Sergeant's Inn this 27 of Nov: 1615.

Your Maj^{tys} most humble and faithful subject and servant.

EDW: COKE*.

The next document regarding Franklin is a letter to the King in Sir E. Coke's handwriting; it

* State-Paper Office, Domestic Papers, 1615, Nov. 27, No. 325.

relates also to Sir T. Monson's arraignment, which will be presently noticed. The reader will remark Sir E. Coke's opinion of the wickedness of Franklin's character as being inconsistent with the use afterwards made of his testimony upon the Earl of Somerset's trial. The passages in italics are interlineations generally written upon erasures.

MAY IT PLEASE YOUR EXCELL^{nt} MAJ^{ty},

What comfort I have received in that your Maj^{ty} had vouchsafed with your own sacred hand to direct me *in this great cause* neither my time nor my pen can express, but I shall keep as a monument of your Majesty's *high* and princely wisdom and *as well* of your gracious favor *to me as of your* trust in me which I will endeavour to execute with all sincerity, alacrity, and readiness.

For Sir Thomas Mounson upon due consideration had of *your Majesty's letters* I intend to defer his trial not in respect of *any* innocence *I find in him* but that *I am really persuaded* he can discover secrets worthy and necessary to be known, and he may be a good witness *in some points w^{ch} he affirmeth* against the Countess, and upon her examination had deemed, which may be a mean to whet her tongue against him. He cannot be in better case than he is but in worse he may be.

Concerning *the vouching of* the Lord Treasurer I have not been slack in that which your Maj^{ty} doth require, for I have it under his hand, that God doth know that he can neither excuse nor accuse him.

For Franklyn he is only reserved for a time to give some light of this work of darkness. But the hour of your Justice and the wickedness of the man is such as long continuance of His life cannot consist together, and therefore after a convenient time when as much as can be is extracted from

him as can be execution shall be done, and your Maj^{ty} never troubled therewith.

And where your Maj^{ty} wrote that you would gladly know whether this new discovery concerns only this villainy, or if it touch you in some higher nature, may it please your Maj^{ty} to be advertised that it concerns not your Maj^{ty}'s own Royal person *nor the Prince that now is*, but some overture is made of some wicked attempt (*besides this villainy*) against some that be dear and near unto you, and besides some *probable suspicions are given of some* other persons, I will not say of what sex they be, to have had an hand in this crying sin of poisoning.

Among passages doubly struck through with Sir Edward Coke's pen in the rough draft of this letter is the following:—

Concerning the secret late discovery new matter, I mean not so much to speak of what sex they be, and the rather for that we have only as yet cause of suspicion, which may be a mean, by the goodness of God, for further discovery. I find not shadow of anything that concerns your Majesty's own sacred person, but what may fall out against some that be dear and near to you I cannot prophecy. I will impart these suspicions so much as I have found out. *And for Franklin, he is so foul and**—

The next proceeding in which Sir E. Coke was conspicuous, is the arraignment of Sir T. Monson. It occurred on the 4th of November, A.D. 1615. He had been charged with negotiations respecting the appointment of Weston, Overbury's gaoler, and with carrying on communications between the

* State Paper Office, Domestic Papers, 1615, Dec. 3, No. 344.

Countess of Somerset and the Lieutenant of the Tower. The proceedings of the arraignment are thus detailed in the State Trials.

When Sir T. Monson came to the bar, he made a motion to the Lord Chief Justice; That, whereas he had written unto his lordship to ask the lord treasurer two questions, which my lord would do; he desired then an answer, and that Sir Robert Cotton might be present.

After the questions were read, he was indicted for conspiring with Weston to poison sir T. Overbury; to which he pleaded, Not Guilty, and would be tried by God and his country.

The Lord Chief Justice broke up the proceedings, and made a speech to this effect, viz. He saw a great assembly, and though it had been shewn them often, yet it could not be said too often, that the city was much bound to God, and to his deputy on earth the king, his master, for their great deliverance, and *exact justice*; for God was always just; and for the king, though they were never so high in place, nor so dear to him, though his own creatures, yet his *justice* is dearer to him, *for which we are upon our knees to give him thanks*; as also for so mild a proceeding in so great an affair: for neither the great man's house in the Tower, nor his lady's house nor this prisoner's house (to my knowledge) have been searched, neither hath this prisoner been committed to the sheriff, but to an alderman, a man who of all others might be most kind to him; for, as I take it lest I should be mistaken, sir Francis Anderson married sir Stephen Some's daughter, and sir Thomas Monson married sir Francis Anderson's sister; I never knew the like favour, nor do I like it so well, but do declare it as a gentle proceeding from the king. For other things, I dare not discover secrets; but though there was no house searched, yet such letters were produced, which make *our deliverance as great, as any that happened to the chil-*

dren of Israel. For Weston and Mrs. Turner, they died penitently, as is worthy to be written in letters of gold; and for the Lieutenant, though with great imprecations, and a high hand he denied, yet for the great glory of the king's justice, he died most penitently and resolutely; this is spoken to the praise of God that hath crowned these just proceedings, though not having need of it, "*Justitia confirmata non eget autoritate;*" wherein we may see the great hand of God; for that morning the Lieutenant was arraigned, Franklin came to me as one afflicted in conscience, not knowing of his arraignment, with evidence, against him; which being delivered to the Jury, one of them heard him say, "Then Lord have mercy on me." But for the present, "*Non est cunctatio longa de vita hominis:*" therefore he must be conveyed to the Tower as a safer place, till further order be taken. Then the Lord Chief Justice addressed his speech to sir Thomas Monson, saying, Whereas you name my Lord-Treasurer, every man's fame is dear unto him, and he hath ever been honourable, you shall hear what he hath answered to my letter.—"After my hearty commendations, I have heard that sir Thomas Monson thinks I can clear him, but I know nothing of him to accuse or excuse him; but I hope he is not guilty of so foul a crime."—You hear (quoth he) that he will neither accuse you, nor excuse you.

Monson. I do not accuse the Lord-Treasurer, nor calumniate him, for I know he is very honourable, but I desire to have an answer to my two questions.

L. C. J. You shall hear more of that when the time serveth; do you as a Christian, and as Joshua bad Achan, "My son, acknowledge thy sin, and give glory to God."

Monson. If I be guilty, I renounce the king's mercy and God's; I am innocent.

L. C. J. There is more against you than you know of.

Monson. If I be guilty, it is of that I know not.

L. C. J. You are popish, that pulpit was the pulpit

where Garnet died, and the Lieutenant as firmly; I am not superstitious, but we will have *another pulpit*.

Dodridge. It is an atheist's word to renounce God's mercy; you must think the change of your lodging means somewhat.

Hyde. I have looked into this business, and I protest, my lord, *he is as guilty as the guiltiest*.

Monson. There was never man more innocent than I; in this I will die innocent.'

After this speech, certain yeomen of his majesty's guard, attending for that purpose, conducted him to the Tower, where between the yeomen and the warders, there was some contention about his entertainment.

The Lord Chief Justice having at this trial let drop some insinuations that Overbury's death had somewhat in it of retaliation, as if he had been guilty of the same crime against prince Henry, sir Thomas Monson's Trial was laid aside, and himself soon after set at liberty, and the lord chief justice was rebuked for his indiscretion, and before the next year expired, removed from his post.

The letter in the State Paper Office last set forth, relates in part to Sir T. Monson's arraignment. The following letters in the handwriting of Sir E. Coke, are connected with the same subject; the parts in italics are interlineations.

MOST GRACIOUS SOVEREIGN,

Sir Thomas Monson was arraigned and pleaded not guilty and put himself upon *God & the country*, contrary to the expectation who thought he would have stand mute, and seeing we meant not to procede we took that course that your justice *might in no sort be blemished nor give any encouragement to him being indurate to which already it was* signified that by the goodness of God very lately some such further discovery had been made (*which was as yet a*

secret) we thought not fit to procede with him at this time, protesting that nothing tended to his advantage or *to* the extenuating of his offence. But having prepared six of the guard in rich coats, and being kept in a private place till the time appointed, they were sent for, and *coming through the multitude of people they* too kept him *in* his fair velvet gown from the Barr and carried him openly in the streets *on foot* to the Tower of London, by warrant subscribed by Mylord Chancellor and myself : which gave the vulgar occasion to say that *surely* he was to be touched in *some* higher degree *and to say the truth it was not fit for a Man indicted of murder to remain in a dwelling house.* What was said for Your Majty's zeal to justice, and *what* moderate and timely courses had been taken in these legal proceedings *and what great blessings of God had been in discoveries of truth* and how much all the people applauded *them* let others repeat.

Sir Thomas Mounson said openly *and fearfully* that if he were Guilty in any degree or had been used as any intelligencer in the matter he refused God's mercy, *which all the people detested as an atheistical speech.* But I told him that he was Popish and therefore *had learned to equivocate or to keep* for there were more proofs against him than he knew *of* ; whereunto he said, though there were twenty witnesses against him yet would *he* protest his innocence at his death *but lest he might lose friends* never deem his Popery though he were divers times changed. Withall he was told that protestations were no proofs, for as great protestations as he made Sir Gervase Helwysse had made in the same *place*, and yet was justly condemned *thereby*, confessed his fault, and died penitently.

I find that none of these that were in the action had any fear of God before their eyes, *but* were fit instruments for any villany or mischief soever and specially this man who *no* doubt knew as much as any man living. I am credibly informed that at his coming many by the way cursed him bitterly, and desired of God that all the rest in that bloody

fact might be known as he was, and others said, God send the death and he would say softly Amen. But he was much dismayed at these the people's clamor, for none pitied him*.

The next document is another letter to the King, in Sir E. Coke's handwriting, regarding Sir T. Monson's arraignment, and which also contains particulars of an examination of the Earl of Somerset in the Tower, in which a remarkable passage will be observed regarding Somerset's aversion to make any kind of submission to the King.

MOST GRACIOUS SOVEREIGN,

That your Maj^{ty} may not impute any negligence unto me in those things that belong to my place, and especially when it concerns your Maj^{ty}, I have sent herewith Mr. Lepton's examination which was taken by me long before Mr. Secretary's letters which I received this day at 12 of the clock. This letter written to Sir William Mounson surmising your *Majesty's censure touching the weakness of the evidence against Sir Thomas Mounson* (which Sir William Mounson hath so divulged as it is grown to a common rumour) hath wrought an extreme obstinacy in Sir Thomas Mounson, and some check to my just & sincere service, but that I esteem not, for I have done nothing in this great cause *reluctante conscientia*: that which moveth me most is that hereby your Maj^{ty} is slandered, which gives not an action de scandalis magnatis, but de scandalis optimi et maximi. And therefore I have committed Mr. Lepton to the prison of the Kings Bench, and is worthy in due time of severe punishment. What Sir W^m. Mounson is, your Maj^{ty} know (and good many rejoice that he is where he is) and seeing Mr. Lepton's mouth is

* State Paper Office, Domestic Papers, 1615, Dec. 4, No. 345.

so full of scandal in the highest degree, and that his wife is a peevish perverse Popish recusant, and an harbourer of Jesuits and Priests, he is not in mine opinion fit to continue in a place so near about your Maj^{ty} sacred person. And likewise before the receipt of Mr. Secretary's letter I had been at the Tower with the Earl of Sommerset concerning the letters in cyphers directed to him ; he (being strictly examined) utterly denied that ever the said letter came to his hands or that he ever knew or heard thereof before this time, neither doth know or can imagine who should wrote it, nor can in any sort understand it. Upon conference with him he seemed to me that he hath heard some London news by Price his servant that is newly come to him (in place of the others that are committed) that he should be brought to his Trial in a short time. Unto whom I thought good to say thus much, that he well knew your Maj^{ty} was the *most renowned King for your Justice in the Christian world* and that seing he was indicted by a most substantial and intelligent jury of Knights and Esquiers of such a crying sin as this is, and that he persisted in denial of the fact, it stood not with the honor of your Maj^{ty}'s justice but to proceed against him upon the said indictment ; least (as Weston said) the net should be spread for the small fishes and not for the great. I tould him that four had already been attainted and executed for the murder of Sir Thomas O. who were all penitent and *confitent*, and *none of them had any malice against Sir Thomas, but were instruments of the bloody malice of others, and therefore God forbid that the authors of so heinous a crime should pass away with impunity* ; whereunto he said to me but little, but seemed to be insensible of his own imminent danger. In the end he desired me to acquaint your Maj^{ty} with certain petitions which I received, and have sent them herewith to your Majesty, although I know them not worthy of the time your Maj^{ty} shall bestow in reading of them. This was observed in him, that *when*

any word casually fell from him in the least degree tending to any submission to your Maj^{ty}, when he heard it read, he would cause it to be put out which to me seemed so strange, as I thought it my duty to acquaint your Maj^{ty} therewith.

I have found out in London thirteen Impostors or *Wizards* pretending to tell fortunes, to procure love, to alter affections, to bring again stolen goods and such like deceits. I committed them all to the common jail, signifying your Maj^{ty}'s gracious and Christian care and charge to have them punished. In the end I have with good sureties bound them to their good behaviour and from their impostures, whereat good Men rejoice and *praise God for your Maj^{ty}'s Justice.*

The Bill whereof your Maj^{ty} had speech with me at my last attendance on you is exhibited and proxy served, and nothing shall be therein pretermitted that may therein justly advance your Maj^{ty}'s important service.

After I had written thus far and was in concluding, Mr. Lieut^t brought me from him a more large discourse, and now he seemed to me that he hath better considered of my words, that I used to him to the end to humble himself; for now this latter doth not only contain the former, but more also, whereby now it appears that he cannot assure himself (as he was wont to do) to be cleared in a legal course of proceedings, but now clearly *confessed that the presumptions ag^t him might be such, having consented and endeavoured with others the imprisonment of Overbury ettc. as that the same being enforced by wit and art against him, the extent of Law might lay hold of him, and find him Guilty, being never so clear.*

Again, he might say that having borne before the eyes of the world so many eminent marks of his Maj^{ty}'s great favor, he might claim some priviledge from a common course of proceedings against an offence done (if it were done by him) not against his Maj^{ty}'s person or state ettc.

but of another nature; and if he should have fallen into any error concerning the same, yet he might be thought to have been transported thereunto either by force of his affection to his so much desired wife, or through the jealousy of the practices of Overbury, and not by the malice of a wicked heart ettc; of these and some otherpass ages in this discourse good use (thanks to be God) may be made of them, for he could not come nearer to an express confession, then he now hath done. *I persuade myself your Maj^{ty} will yield to none of his petitions all things considered.* God send them that be at sea safe arrival, and then fiat plena et celeris justicia, for all good. Men earnestly expect it. When your Maj^{ty} hath perused this packet, I most humbly beseech you to return them to me again, who shall continually pour out his prayers to the Almighty (qui dat salutem regibus) to preserve your Maj^{ty} with long life in all honor, health and happiness to the rejoicing of all good hearts.

From Serjeant's Inn this 8 of Febr^y 1615 at seven of the clock at night.

Your Majesty's most humble and faithful subject & servant

EDW: COKE*.

The statement in the State Trials above given, according to which it would appear that Sir T. Monson's trial had been laid aside in consequence of some speeches of Sir E. Coke, agrees with what Wilson relates upon the subject, who says, that after one day's trial, the proceedings were put off in consequence of some "rhetorical flourishes" of Sir E. Coke, intimating that Overbury had been guilty of poisoning Prince Henry. He observes

* State Paper Office, Domestic Papers, 1616, Feb. 8, No. 31.

that "the sudden stopping of Monson's trial put strange imaginations into men's heads."

Sir A. Weldon's account of the reason for putting off Monson's trial is as follows:—

The next that came on the stage was Sir Thomas Monson; but the night before he was to come to his tryal, the king being at the game of maw, said, "To-morrow comes Thomas Monson to his trial."—"Yea," said the kings card-holder, "where, if he doe not play his masters prize, your majesty shall never trust me." This so run in the king's mind, as the next game, he said he was sleepy, and would play out that set next night. The gentleman departed to his lodging, but was no sooner gone but the king sent for him. What communication they had, I know not, (yet it may be, can more easily guess than any other;) but it is most certain, next under God, that gentleman saved his life, for the king sent a post presently to London, to let the Lord Chiefe Justice know he would see Monsons examination and confession, to see if it were worthy to touch his life for so small a matter. Monson was too wise to set any thing but fair in his confession: what he would have stab'd with, should have been *viva voce*, at his arraignment. The king sent word, he saw nothing worthy of death or of bonds in his accusation or examination. Cook was so mad he could not have his will of Monson, that he said, "Take him away, we have other matters against him of an higher nature." With which words, out issues about a dozen warders of the Tower, and took him from the barre; and Cooks malice was such against him, as, though it rained extreamly, and Monson not well, he made him goe a-foot from the Guild-Hall to the Tower, which almost cost him his life.

The subject of Monson's arraignment has very

much perplexed writers of history. Dr. Campbell, in his *Life of Coke*, in the "*Encyclopædia Britannica*," supposes that the trial was put off in consequence of an acquittal being apprehended, which it might be considered would operate unfavourably to the prosecution of the Earl of Somerset, whose conviction was much desired. This view of the subject is adopted in a manuscript note to the copy of the Tract called "*Truth brought to light by Time*," in the Athenæum library, which formerly belonged to Sir James Macintosh.

It would appear from the letters of Coke in the State Paper Office, now published, that the trial was not put off in consequence of any rhetorical flourishes, but that its postponement was determined on before Sir T. Monson was called upon to plead.

It is difficult to suppose that any apprehension could be entertained of Sir T. Monson being acquitted, seeing the manner in which, at the period in question, juries were chosen and kept in awe, and the other unfair means used to ensure convictions. And further, as the weakness of the evidence that could be adduced against Monson must have been known before the arraignment, it may be asked, why the arraignment was not postponed altogether until after the Earl of Somerset's trial? In like manner, it may be inquired, if the Chief Justice's alleged ground of the discovery of some

higher offence were the true one, why so much haste was evinced to arraign upon a charge with which it was not intended immediately or at all to proceed? Again, it is strange that Monson should have been set at liberty, after Coke writes, as we have seen, to the King, stating that Monson knew as much of the plot as any man living; and after one of the Judges had "protested" that on looking through the proofs, he found Monson "as guilty as the guiltiest;" and without more being heard of the letters mentioned by Sir E. Coke, that had been discovered, and which "made the deliverance of the nation as great as any that happened to the children of Israel?"

It is remarkable that, in Sir E. Coke's letter to the King, written apparently on the morning of the arraignment, no reason is assigned for not proceeding with Monson's trial; but great pains are taken to satisfy the King that no sinister inferences were drawn by the public on that occasion. The second letter shows, that the King had expressed "a censure touching the weakness of the evidence against Sir T. Monson."

It may be thought, on a consideration of all the circumstances, that Sir T. Monson's trial had been fixed for the 4th of December, and that the King had put it off at a very short notice, very likely overnight, as Weldon represents. The probable motives of his taking this course will be considered

in a subsequent chapter: we shall there also find that Weldon is confirmed by modern discoveries in his relation as to secrets of the royal palace, which might otherwise have been thought more improbable than this card-table anecdote.

The language of Sir E. Coke towards Sir T. Monson, at his arraignment, was of a piece with that used by him towards Mrs. Turner and other prisoners tried for the murder of Sir T. Overbury. It verifies the imputation conveyed in Sir F. Bacon's celebrated expostulation, in which he writes to Sir E. Coke,—“Supposing this to be the time of your affliction, that which I have propounded to myself is, by taking this seasonable advantage, like a true friend, though far unworthy to be counted so, to show you your true shape in a glass.”

Sir F. Bacon then tells Sir Edward, among other “errors” which he calls on him to “behold,” that “in your pleadings you were wont to insult over misery.” Donne, in a poetical letter to Ben Jonson, shows, that Coke in his day was notorious for what another Chief Justice, Jefferies, called “using the rough side of his tongue.”

With guilty conscience let me be worse stung,
Than thieves with Popham's sentence, or Coke's tongue
Traitors use.

As Attorney-General, an office which has somewhat of a judicial character, we find Sir E. Coke taunting the celebrated Earl of Essex at his trial,

with saying, "He of this earldom shall be Robert the last, who of this kingdom thought to be Robert the First*."

A few years afterwards, he cruelly insulted the yet more famous Sir W. Raleigh, by calling him, whilst pleading for his life, "Thou art a monster; thou hast an English face, but a Spanish heart!"—"Damnable atheist!"—"Spider of hell!" And the expressions immortalized by Shakspeare, "*Thou viper, for I thou thee, thou traitor†!*"

Again, on a trial for the Gunpowder Treason, Sir E. Coke, the Attorney General, says to one prisoner, "you do not watch and *pray*, but watch to *prey*." He calls on Digby "to admire the moderation of the King, in that for so exorbitant a crime no new torture answerable thereto was desired to be inflicted on him." He calls Garnet "a Doctor of five DD's, viz., dissimulating, deposing of princes, disposing of kingdoms, daunting and deterring of subjects, destruction;" and as Garnet was the Superior of the Jesuits, he tells him, "*Qui cum Jesu itis, non itis cum Jesuitis.*"

* A manuscript in Sir E. Coke's hand-writing of his address upon Essex's trial shews that some of the objurgatory epithets applied to the conspirators were not words of heat, but were written on erasures, and appear to have been altered at least five or six times, as in particular the words "Catiline, popish, dissolute and desperate company."

† "If thou *thou*st him some *thrice* it will not be amiss." Sir Toby in *Twelfth Night*. This Comedy is supposed by Malone to have been written A.D. 1613. Sir W. Raleigh's trial took place on the 17th of November, 1603.

But, perhaps, Sir E. Coke never descended lower in point of wit and insult of misery, than when he told *Cuffe*, whilst under trial for High Treason, that he would “give him a *cuff* that should set him down*.”

Sir F. Bacon had probably some of these *cuffs* of Sir E. Coke in his mind, when he charged him with insulting over misery in his *pleadings*. But the Overbury trials afford a yet stronger ground of accusation against Sir E. Coke, and which is not, in general, adverted to by his biographers, viz., that he insulted over the misery of prisoners, upbraided them for their religious opinions, prejudged their guilt, and made them the subject of cruel witticisms, not only in his *pleadings* when Attorney General, but even whilst in the exercise of the solemn functions of a Judge.

* Sir E. Coke, on the trials for the Gunpowder Treason, gave an interpretation of the letters on the Roman Eagles, S. P. Q. R., which meant *Senatus Populusque Romanus*. He would read them as signifying, “*Stultus Populus Quærit Romam.*” Upon Garnet’s trial, after quoting four Latin verses about the lions in the King’s coat of arms, he says, “These four noble and magnanimous lions, so firmly and individually united, are able, without any difficulty or great labour to subdue and overthrow all the *Bulls*, and their *Calves* also, that have been or can be sent into England.” In another part of the trial of Garnet, he says, “The *Bulls* which should by loud lowing have called all their calves together, with a preparation to band against our Sovereign, and to have cropt those sweet olive-buds that environ the royal seat, did more good than hurt, as it happened, by calling in a third bull, which was *Mr. Bull*, the hangman, to make a speedy riddance and dispatch of this forlorn fellowship.”

It is gratifying to observe the progress of good feeling in the treatment of prisoners on their trials, which extends to the language in which they are addressed. There is no fear of any Judge in these times permitting a prisoner at his trial to be interrupted in his defence by such observations as were interposed, when Harrison, the regicide, was addressing his Jury. "This man hath the plague all over him; it is a pity any should stand near him, for he will infect them. Let us say to him, as they used to write over a house infected, 'The Lord have mercy upon him,' and so let the officer take him away. Methinks he should be sent to Bedlam till he comes to the gallows. Mr. Harrison, we are ready to hear you, but to hear such *stuff*, it must not be suffered." Nor would any Judge now venture to accuse a prisoner in the language used by Jefferies to Baxter,— "Richard! Richard! dost thou think we will hear thee poison the Court? Richard! thou art an old knave; and thou hast written books to load a cart, every one as full of sedition as an egg is of meat."

The last Judge whom poetical justice has "damned to everlasting fame," for imputed brutality of language towards prisoners, is Page, who tried Savage, and of whom Pope writes,

Slander or poison dread from Delia's rage,
Hard words, and hanging, if your judge be Page.

Dr. Johnson relates, that Judge Page summed

up the evidence against Savage, with his "usual insolence and severity," and has preserved the following specimen of the Judge's ironical harangue:

"Gentlemen of the Jury, you are to consider that Mr. Savage is a very great man, a much greater man than you or I, Gentlemen of the Jury; that he wears very fine clothes, much finer clothes than you or I, Gentlemen of the Jury; that he has abundance of money in his pocket, much more money than you or I, Gentlemen of the Jury; but, Gentlemen of the Jury, is it not a very hard case, that Mr. Savage should therefore kill you or me, Gentlemen of the Jury!"

In a note of *Scriblerus* on the line of the "Dunciad,"

And dies when Dulness gives her *Page* the word,

we find it written, "There was a Judge of this name, always ready to hang any man, of which he was suffered to give a hundred miserable examples during a long life, even to his dotage. Though the candid *Scriblerus* imagined *Page* here to mean no more than a *page* or *mute*, and to allude to the custom of strangling state criminals in Turkey by mutes or *pages*. A practice more decent than our *Page*, who, before he hanged any person, loaded him with reproachful language."

On the arraignment of the Countess of Somerset, and on the Earl of Somerset's trial, Sir Edward Coke interposed a few observations which

have been noticed in previous parts of this work. The introduction of Dr. Whyting, and the reference to the dying speeches of the executed criminals, on the former occasion, and his dogma on the latter, that “when delinquents, in their testimony, accuse themselves, it is as strong as if upon oath,” leave us in doubt, whether his judicial discretion, or his integrity, or both, are liable to the gravest censure.

Coke's flattery of King James, on the former of these occasions, is not inconsistent with experience of mankind, among whom persons are often met with who are as obsequious towards superiors, as they are overbearing and insolent to those beneath them, or who are placed in their power. When Sir E. Coke was Speaker of the House of Commons, in Queen Elizabeth's Parliament of the year 1592, he thus glozingly expresses himself:—“As in the heavens, a star is but *opacum corpus* until it have received light from the sun, so stand I *corpus opacum*, a mute body, until your Highness's bright shining wisdom hath looked upon me, and allowed me.” And, in a speech, at the conclusion of the Session, he said, “I would compare this sweet Council of ours to the Government of little *Bees*. The little bees have but one Governor, whom they all serve. Your Majesty is that noble Queen whom *we* all serve: being protected under the shadow of your wings we live, and wish you may ever set upon your throne over

us. Under your happy government we live upon honey: we suck every sweet flower; but where the bee sucketh honey, there also the spider draweth poison. But such drones we will expel the hive; our lands, our goods, our lives are prostrate at your feet to be commanded."

Sir Edward Coke, however, lived to use more independent and intrepid language, when King Charles attempted to annex to the Petition of Right a salvo of his "Sovereign Power;" on which occasion Coke exclaimed, in the House of Commons, "Magna Charta is such a fellow, he will have no Sovereign." And previously, in the time of King James, when Coke was imprisoned for his speeches in the House of Commons, it is related that the Prince of Wales, interceding for him by the name of Sir Edward Coke, the King answered, that he knew no such man; and when the Prince repeated his entreaties for him by the name of Mr. Coke, the King still answered, that he knew no one of that name. But "he swore there was one *Captain Coke*, the leader of the faction in Parliament*."

A letter, written by Sir E. Coke, has already been detailed, which contains particulars of ineffectual attempts being made to obtain a confession from the Earl of Somerset, or to induce him to plead guilty. The following letter, in Sir E. Coke's handwriting, is on the same subject. When

* Sloane MSS., Feb. 2, 1621-2.

these two letters are read in connection with Bacon's letters regarding similar attempts to overcome the Earl's resolution, which will be detailed in the next chapter, and with the Lord High Steward's persuasions in Westminster Hall, the Earl's perseverance in defending his innocence will appear a feature in his conduct deserving of much consideration, in passing our judgment upon his guilt or innocence.

MOST GRACIOUS SOVEREIGN,

We, according to your *Majty's* directions *have* repaired to the Tower to My Lord of Sommerset, and first *we* took occasion to answer unto certain requests formerly made by him *and delivered* to us by Mr. Lieutenant concerning the having of others *of his* servants to attend on him, *and* that Sir Robert Carre *his kinsman* might speak with him touching his private affairs *in the presence of the Lieutenant, whereunto* he so earnestly had by Mr. Lieutenant pressed us to answer. He in renewing of the same *to* unto us of himself did add another (which formerly he had made to your *Majty*) and that was that he might know before *he came to his trial* what evidence or proof could be given against him. And that if he could sufficiently answer and avoid them he *hoped he should* not be brought to a public trial, whereunto answer was made that neither did his request stand with the course of Justice, neither had the like been granted to our knowledge to any in the like case before, and that if he should persist in denial of the fact it stood not with your *Majty's* honor and the course of Justice but to put him to his Trial, for that by a worthy and substantial Jury of Knights and Esquires he, and the Countess his wife, *stood* indicted of being accessory to the foul murder of Sir Thomas Overbury. And that she had *voluntarily* confessed the offence—that your *Majty*

had committed Justice to us but had reserved your mercy to yourself, whereof we could not say anything, but verily persuaded ourselves, that without humble confession and true contrition *which was the only course he could take would* that gate be shut against him. Then was it told him *according to your Majty's directions* how the offices at Court were disposed of, which when he had heard *we leaving* he never (we well observing him) changed countenance or seemed *to us* to grieve at all, only he said in (without passion or sign of sorrow) that he was sorry, that his wife was guilty of *so foul a fact*. After this we remembering him of his former requests for his servants and his Cousin Carre, *and being ready to grant them* and he seemed to make no account *thereof*, *saying* he would consider *of them*, for we think, we had prevented his end which was to hear news. In the end, we did take an examination of him upon certain *material* interrogatories which were formerly thought on and provided, whereunto he made direct answers, which we take in some points very material, *of all which* we thought it our duty to give your Majty an account and shall according to our most bounden duties always pray to the Almighty for your Majty's in all happiness and health to the unspeakable comfort of all good hearts to continue*.

There will be found sets of memoranda, in the State Paper Office and British Museum, consisting of notes in Sir E. Coke's handwriting, concerning various points connected with the Great Oyer. They are voluminous, covering several sheets, and are written with so many interlineations and corrections, and have so many private marks attached, that no adequate idea of them can be

* State-Paper Office, Domestic Papers, 1616, Feb. 8, No. 33. The words in *italic* are interlineated in the original.

formed, without inspecting the originals ; and they are so extremely brief, that they cannot be understood by any one not intimately conversant with all the minute particulars of the trials. They indicate close attention paid to every bearing of the case, together with much acuteness of observation of human motives and conduct, and a sedulous regard to arrangement of the proofs.

There is nothing extant in print, by which we are admitted so intimately, as by means of these memoranda, into the study of Sir E. Coke, and are there enabled to follow the workings of his mind, from his first inspection of a mass of voluminous and complicated details, until he had moulded them into a close concatenation of luculent proofs.

Among the memoranda are the following notes in Sir E. Coke's handwriting, written on the margin of a copy of the Countess of Somerset's letter to the Lieutenant of the Tower :—

Nota. "I have but one sent to me;" that must be sent by Rochester for none sent, but they two.

Nota. "I was bid to bid you say;" that must be by Rochester for none else could bid to command her but he.

Nota. "I was bid &c. that if *he* should send;" *he* is interpreted of Rochester.

Nota. "This is expounded thus;" Give this tart and jelly now sent, wherein is poison, and then all shall be well.

Lastly. "If he send them to your wife," is expounded,

if Overbury send any part of them to your wife, keep them for me, because she should eat none of them.

A set of memoranda is endorsed by Sir E. Coke : "The principal points against the Lieutenant and Sir Thomas Mounson." It consists of about twenty points against the former, and nine against the latter, most of them numbered. They are set down very succinctly, and are accompanied with a multitude of marginal notes and private marks. The points against Mounson are as follows :

Against Sir Thomas Mounson.

Nota. The Lieutenant under his own hand against Mounson ettc.

1. He was the first mover for Sir Gervase to be Lieutenant.

2. He knew of the Countess's hatred to Overbury.

3. He was the mover from the Countess that Weston should be Overbury's keeper before and after he was Lieut^t.

4. He received £1700 for the corrupt contract of Sir Gervase's placing.

5. Presently after *Weston* was placed, Mounson came from the Countess to come to her to lay at the place of meeting, but for what purpose he knew not, so upon the water he was there but as a Lackey.

6. Gym his Man carried the poisoned Tarts and Jellies from the Countess.

7. Gim his Man carried the poisoned letter from the Countess to the Lieutenant.

8. Sir Thomas M. advised the Lieut^t from the Earl of Northampton and Countess of Essex, that he should be

kept close, without any letter or message to be sent to him or from him, so indeed he was closed to his friends, but his enemies might write or send him any thing they would.

9. He advised the Lieut^t to search in the Tarts for letters.

The following memoranda consist of notes of Sir E. Coke, accompanying Sir Gervase Helwysse's confession :—

Matters confessed by the Lieut^t of the Tower.

“ That Sir Thomas Mounson requested the Lieut^t of the Tower not only that he might serve in the Tower, but that he might keep Sir Tho^s Overbury, which the Lieut^t performed accordingly.

Not many nights after Weston did meet me (the place he knows and declares not) being ready to carry up his supper asked me whether he should now give him that which he had or no. I presently did withdraw him, not taking any amazement nor pretending ignorance, but until I had discovered that which I desired did run the same course with him. When I had obtained that which I desired, I did begin to terrify him with God's eternal judgements, did so strike him, (that) he blessed the time he did ever know me.”

Upon this last paragraph Sir E. Coke makes the following notes :—

1. Wherefore did not he reveal it, if so to whom.
2. Wherefore did he continue him to be his keeper after this.
3. How did the Lieut^{nt} understand the mystery by these dark words.

“Why, said the fellow, did not you know what should be done?”

Upon this paragraph Sir E. Coke notes :—

What moved him to think the Lieutenant privy.

“I intimated so much to Sir Tho^s Mounson.

My lord of Sommerset sent him Tarts and Pots of Jelly. These were counterfeited and others sent to be presented in their stead, but they were never presented, sometime making his keeper say, my children had desired them, sometime I made my own Cook prepare the like.”

Upon this paragraph Sir E. Coke makes the following note :—

1. Who brought them and how often ettc, note before the king's progress.

Weston had since confessed to me, and that which wrought it was a Clyster.

The Apothecary had a servant w^{ch} was corrupted. £20 Weston said was given.

He named no actor in this business but Mrs. Turner.

After some whispering of this, Mrs. Turnour sent unto him ettc. He was sent to sound me ettc.

The following notes of Sir E. Coke relate to an examination of Weston :—

1. Observe his denial.

2. He confess he had the glass and water of Franklyn.

3. The Lieut^t seeing the glass asked him what a villain art thou.

4. He threw the glass and water away.

5. Sir Thomas Mounson at the request of Mrs. Turner preferred him : *at what time.* My Mistress told me that if

we would give to Sir Tho^s that which should be sent him, then the Lady Somerset would reward him well. Franklyn told me he knew from whence it came.

Weston being confronted confessed all the Lieut^{ts} speeches*.

There are several other sets of memoranda, containing many divisions and subdivisions of matters affecting the different prisoners, together with numerous topics for speeches on their several cases, and common-places on the subject of poisoning. These are sometimes numbered in a long series, and are sometimes set down without any order. The particulars thus briefly noted are many hundreds in number. The following points occur amongst them:—

The Law;—no question can be made after judgment upon a verdict.

Where had you a cat that a medicine should be tried on her?

To confront Margaret for the Cat.

To explain Somerset's declaration of the 7th of February, that he with others assented to the imprisonment of Overbury.

The Lieutenant confessed that it was agreed between himself, the Countess, Lord Northampton and Mounson, that Overbury, in their correspondence, should pass by the name of the *Scab*.

Weston, Turner, Sir Gervase, Mounson had no malice against Overbury. They were but instruments of the malice of others.

To question Franklin, what became of the wedding-ring my Lord of Essex and the Lady were married with.

* State-Paper Office, Domestic Papers, 1615, Dec. 1, No. 335.

To question Savery, whether ever he told one Master Thomas, that at this Christmas to come, there would be a great alteration in the Court.

The truth of the Glisten.

You confess nothing but of yourself and notorious known proofs ; If you can discover any matter against others, I will not divert.

Proofs *great ones*.

Life is of no value.

Believe me, People, by examples past,
Blood will have blood, either first or last.

Thus we have taken a view of Sir E. Coke's conduct in the business of the "Great Oyer of Poisoning." In regarding his labours in this matter, it is necessary to bear in mind that we are scrutinizing only a brief period of the long public life of the most famous of English lawyers. In his other days, judgments were delivered, and commentaries were composed by him, which have associated the name of Coke with the idea of oracular wisdom in the science of English Law. And in cherishing the memory of those who, in times of peril, have stood forward as champions in vindicating the liberties of the country, Posterity reveres the name of Coke as the principal author, and one of the most vigorous promoters of the Petition of Right.

It is also deserving of remembrance, that Sir E. Coke had the greatness of mind to promulgate his own chastising sentence on opinions which he had advocated under the influence of those temp-

tations to which the judgments of the wise in all ages have been too often found subservient. He left as a warning to posterity a memorable declaration of his past errors, which he concludes with saying, "*Sic libere liberari animam meam.*"

At the same time, every biography, either of Bacon or of Coke, must be, in some measure, superficial, in which their conduct with regard to the Great Oyer of Poisoning is not particularly examined. In these trials we may observe the operation of the minds of two individuals, who are not only among the most eminent characters whom this nation has produced, but who are unrivalled in their several spheres of eminence. The circumstances of the death of Sir T. Overbury afforded adequate scope for the exercise of their abilities; and the intense interest in the proceedings which pervaded all classes of the community, and which deeply agitated the mind of the King, may be supposed to have called forth all the resources of their intellects.

The view which has been taken of these trials will, in some respects, tend to augment our admiration of Sir E. Coke, whilst he displays an industry, acuteness, and zeal in the investigation of matters of fact, worthy of his pre-eminent reputation for similar merits in developing abstruse matters of law. But it must also leave a painful impression of the weakness of his sentiments of justice, and of his feelings of humanity.

Wilson, Sir E. Coke's contemporary, designates him as a "spirit of fiery exhalation, whose activity was only equalled by his subtlety." His zeal throughout the proceedings of the Great Oyer cannot be suspected of being stimulated by the base motives of Court favour and promotion, which instigated Sir F. Bacon, on various occasions, to pervert law, trample on justice, and outrage humanity. But the wishes of his Sovereign, combined with an anxiety to maintain or augment his legal reputation, and a zeal for promoting a cause in which he had embarked, together, probably, with a desire to accomplish what he believed the ends of justice by whatever means, may be thought to have led him into courses which he must afterwards have reviewed with compunction and regret.

CHAPTER VI.

CONDUCT OF SIR FRANCIS BACON IN THE PROCEEDINGS RELATIVE TO THE GREAT OYER OF POISONING.

BACON's character appears in an unfavourable aspect in the proceedings relative to the Great Oyer of Poisoning, because, in various transactions connected with it, he seems to have acted under an impression that preferment and honours were to be obtained by pursuing a different course from that which uncompromising virtue would have dictated. To such struggles of honourable self-denial, in opposition to the impulses of a towering ambition, the mind of Bacon was unequal; superior as it was to the general standard of human intellect in most respects in which he can be compared with the greatest men of all ages and nations.

Sir F. Bacon's first public appearance in the proceedings connected with the murder of Sir T. Overbury, was, on the occasion of preferring, in the Star Chamber, the information against Sir J. Hollis, Sir J. Wentworth, and Mr. Lumsden, for traducing public justice. In his speech on this occasion, Sir F. Bacon, after referring to the statute of Henry VIII., making poisoning a species

of High Treason, says, "And, therefore, it was most gravely, judiciously, and properly provided by that statute, that empoisonment should be High Treason: Because whatever offence tendeth to the utter subversion and dissolution of human society, is in the nature of High Treason."

Of the offence of poisoning, he further says:—"It is an offence, that I may truly say of it, *non est nostri generis nec sanguinis*. It is, (thanks be to God,) rare in the Isle of Britain. It is neither of our country, nor of our church: you may find it in Rome or Italy. There is a Region, or, perhaps, a Religion for it."

Of Sir T. Overbury, Sir F. Bacon observes, on the same occasion, "I knew the gentleman. It is true, his mind was great, but it moved not in any good order; yet, certainly, it did commonly fly at good things. And the greatest fault I ever heard of him was, that he made his friend his idol."

Sir F. Bacon then descants, in the following terms, upon what he calls the "temper of his Majesty's justice, and the strength thereof."

First, it pleased my lord chief justice to let me know, (that which I heard with great comfort) which was the charge that his majesty gave to himself first, and afterwards to the commissioners in this case, worthy certainly to be *written in letters of gold*, wherein his majesty did fore-rank and make it his prime direction, that it should be carried without touch to any that was innocent; nay more, not only without impeachment, but without aspersion: which was a most noble and princely caution from his majesty;

for men's reputations are tender things, and ought to be like Christ's coat, without seam. And it was the more to be respected in this case, because it met with two great persons; a nobleman that his majesty had favoured and advanced, and his lady being of a great and honourable house: though I think it be true, what the writers say, that there is *no pomegranate so fair or so sound, but may have a perished kernel*. Nay, I see plainly, that in those excellent papers of his majesty's own hand-writing, being as so many *beams of justice issuing from that virtue which doth shine in him*; I say, I see it was so evenly carried without prejudice, (whether it were a true accusation of the one part, or a practice of a false accusation on the other) as shewed plainly that his majesty's judgment was "*tanquam tabula rasa*," as a clean pair of tables, and his ear "*tanquam janua aperta*," as a gate not *side* open, but *wide* open to truth, as it should be by little and little discovered. Nay, I see plainly, that at the first (till farther light did break forth) his majesty was little moved with the first tale, which he vouchsafeth not so much as the name of a tale; but calleth it a rumour, which is an headless tale.

As for the strength or resolution of his majesty's justice, I must tell your lordships plainly: I do not marvel to see kings thunder out justice in cases of treason, when they are touched themselves; and that they are "*vindices doloris proprii*;" but that a king should "*pro amore justitiæ*" only, contrary to the tide of his own affection, for the preservation of his people, take such care of a cause of justice, that is rare, and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this kingdom, nor in any other kingdom, the blood of a private gentleman vindicated, "*cum tanto motu regni*," or to say better, "*cum tanto plausu regni*."—If it had concerned the king or prince, there could not have been greater nor better commissioners to examine it. *The term hath*

been almost turned into a justitium, or vacancy; the people themselves being more willing to be lookers-on in this business, than to follow their own. There hath been no care of discovery omitted, no moment of time lost. And therefore I will conclude this part with the saying of Solomon, "Gloria Dei celare rem, et gloria regis scrutari rem." And his majesty's honour is much the greater, for that he hath shewed to the world in this business, as it hath relation to my lord of Somerset, (whose case in no sort I do prejudice, being ignorant of the secrets of the cause, but taking him as the law takes him hitherto, for a suspect) I say, the king hath to his great honour shewed, that were any man in such a case of blood, as the signet upon his right hand, (as the scripture says) yet would he pull him off.

After mentioning that Sir J. Hollis wished Weston to "satisfy the world," Sir F. Bacon asks, "What world? I marvel! It was sure the world at Tyburn. For the world at Guildhall, and the world at London, was satisfied before: Teste the bells that rang."

On relating that Sir J. Hollis said, at the trial of Weston, that "if he were of the Jury he would doubt what to do," Sir F. Bacon observes, that his speech was equally criminal, whether said before or after verdict. "For whether Sir J. Hollis were a Prejuror or a Postjuror, the one was to prejudice the Jury, the other was to taint them."

Sir F. Bacon said, that the questions which might be asked a criminal at the place of execution, "might be to tend to further revealing of

their own or others guiltiness; but to ask a question in the nature of a false interrogatory, to falsify what is *res judicata*, is intolerable."

The remaining particulars of Bacon's conduct, which are not apparent from the reports of the Earl of Somerset's trial detailed in the second chapter of this work, are to be collected from his own letters. These are as follows:—

The first published letter of Sir F. Bacon, concerning the trial of Somerset, is dated 22nd January, 1615. It is a letter to the King, in which he writes:—

It may please your most excellent Majesty,

At my last access to your Majesty, it was fit for me to consider the time and your journey, which maketh me now trouble your Majesty with a remnant of that I thought then to have said: besides your old warrant and commission to me, to advertise your Majesty when you are *aux champs*, of anything that concerned your service and my place. I know your Majesty is *nunquam minus solus, quam cum solus*; and I confess, in regard of your great judgment, under which nothing ought to be presented but well weighed, I could almost wish that the manner of Tiberius were in use again, of whom Tacitus saith, *Mos erat quamvis præsentem scripto adire*; much more in absence. I said to your Majesty that which I do now repeat, that the evidence upon which my lord of Somerset standeth indicted is of a good strong thread, considering impoisoning is the darkest of offences; but that the thread must be well spun and woven together; for your Majesty knoweth, it is one thing to deal with a jury of Middlesex and Londoners, and another to deal with the peers; whose objects perhaps

will not be so much what is before them in the present case, which I think is as odious to them as to the vulgar, but what may be hereafter. Besides, there be two disadvantages we that shall give in evidence shall meet with somewhat considerable; the one, that the same things often opened lose their freshness, except there be an aspersion of somewhat that is new; the other is the expectation raised, which makes things seem less than they are, because they are less than opinion. Therefore I were not your attorney, nor myself, if I should not be very careful, that in this last part, which is the pinnacle of your former justice, all things may pass *sine offendiculo, sine scrupulo*. Hereupon I did move two things, which, having now more fully explained myself, I do in all humbleness renew. First, that your majesty will be careful to choose a steward of judgment, that may be able to moderate the evidence and cut off digressions; for I may interrupt, but I cannot silence: the other, that there may be special care taken for the ordering the evidence, not only for the knitting, but for the list, and, to use your majesty's own words, the confining of it. This to do, if your majesty vouchsafe to direct it yourself, that is the best; if not, I humbly pray you to require my lord chancellor, that he, together with my lord chief justice, will confer with myself and my fellows, that shall be used for the marshalling and bounding of the evidence, that we may have the help of his opinion, as well as that of my lord chief justice; whose great travels as I much commend, yet that same *plerophoria*, or over-confidence, doth always subject things to a great deal of chance.

Thus thirsty to hear of your majesty's good health, I rest—

The next letter of Sir F. Bacon, is addressed to Sir G. Villiers, and is dated April 13, 1616.

The only paragraphs in this letter, which are material to the present inquiry, are the following:—

Wherefore, first for Somerset, being now ready to proceed to examine him, we stay only upon the duke of Lenox, who it seemeth is fallen sick and keepeth in; without whom, we neither think it warranted by his majesty's direction, nor agreeable to his intention, that we should proceed; for that will want, which should *sweeten the cup of medicine*, he being his countryman and friend.

Farther, I pray let his majesty know, that on Thursday in the evening my lord chief justice and myself attended my lord chancellor at his house for the settling that scruple which his majesty most justly conceived in the examination of the lady Somerset; at which time, resting on his majesty's opinion, that that evidence, as it standeth now uncleared, must *secundum leges sanæ conscientiæ* be laid aside; the question was, whether we should leave it out, or try what a re-examination of my lady Somerset would produce? Whereupon we agreed upon a re-examination of my lady Somerset, which my lord chief justice and I have appointed for Monday morning. *I was bold at that meeting to put my lord chief justice a posing question;* which was, Whether that opinion which his brethren had given upon the whole evidence, and he had reported to his majesty, namely, that it was good evidence, in their opinions, to convict my lord of Somerset, was not grounded upon this part of the evidence now to be omitted, as well as upon the rest: who answered positively, No; and they never saw the exposition of the letter, but the letter only.

The third letter of Sir F. Bacon, on the same subject, is dated April 18, 1616; it is addressed to Sir George Villiers.

Sir,

I received from you a letter of very brief and clear directions; and I think it a great blessing of God upon me and my labours, that my directions come by so clear a conduit, as they receive no tincture in the passage.

Yesterday my lord chancellor, the duke of Lenox, and myself, spent the whole afternoon at the Tower, in the examination of Somerset, upon the articles sent from his majesty, and some other additionals, which were in effect contained in the former, but extended to more particularity, by occasion of somewhat discovered by Cotton's examination and Mr. Vice-Chamberlain's information.

He is full of protestations, and would fain keep that quarter toward Spain clear: using but this for argument, that he had such fortunes from his majesty, as he could not think of bettering his conditions from Spain, because, as he said, he was no military man. He cometh nothing so far on, for that which concerneth the treaty, as Cotton, which doth much aggravate suspicion against him: the farther particulars I reserve to his majesty's coming.

In the end, *tanquam obiter*, but very effectually, my lord chancellor put him in mind of the state he stood in for the impoisonment; but *he was little moved with it*, and pretended carelessness of life, since ignominy had made him unfit for his majesty's service. I am of opinion that the *fair usage of him*, as it was fit for the Spanish examinations, and for the questions touching the papers and dispatches, and all that, so it was no good preparative to make him descend into himself touching his present danger: and therefore my lord chancellor and myself thought not good to insist upon it at this time.

For the conclusion of your letter concerning my own comfort, I can but say the Psalm of *Quid retribuam?* God that giveth me favour in his majesty's eyes, will strengthen me in his majesty's service. I ever rest

Your true and devoted servant,

FR. BACON.

To requite your postscript of excuse for scribbling, I pray you excuse that the paper is not gilt, I writing from Westminster Hall, where we are not so fine.

The fourth letter is dated April 28, 1616; it is addressed to the King.

It may please your Most Excellent Majesty,

Your majesty hath put me upon a work of providence in this great cause, which is to break and distinguish future events into present cases; and so to present them to your royal judgment, that, in this action, which hath been carried with so great prudence, justice, and clemency, there may be, for that which remaineth, as little surprise as is possible; but that things duly foreseen may have their remedies and directions in readiness; wherein I cannot forget what the poet Martial saith; *O quantum est subitis casibus ingenium!* signifying, that accident is many times more subtle than foresight, and over-reacheth expectation; and besides, I know very well the meanness of my own judgment, in comprehending or forecasting what may follow.

It was your majesty's pleasure also, that I should couple the suppositions with my opinion in every of them, which is a harder task; but yet your majesty's commandment requireth my obedience, and your trust giveth me assurance.

I will put the case, which I wish; that Somerset should make a clear confession of his offences, before he be produced to trial.

In this case it seemeth your majesty will have a new consult; the points whereof will be, 1. Whether your majesty will stay the trial, and so save them both from the stage, and that public ignominy. 2. Or whether you will, or may fitly by law, have the trial proceed, and stay or reprieve the judgment, which saveth the lands from forfei-

ture, and the blood from corruption. 3. Or whether you will have both trial and judgment proceed, and save the blood only, not from corrupting, but from spilling.

REX. *I say with Apollo, Medio tutius itur, if it may stand with law ; and if it cannot, when I shall hear that he confesseth, I am then to make choice of the first or last.*

These be the depths of your majesty's mercy which I may not enter into : but for honour and reputation they have these grounds :

That the blood of Overbury is already revenged by divers executions.

That confession and penitency are the footstools of mercy ; adding this circumstance likewise, that the former offenders did none of them make a clear confession.

That the great downfall of so great persons carrieth in itself a heavy judgment, and a kind of civil death, although their lives should not be taken.

All which may satisfy honour for sparing their lives. But if your majesty's mercy should extend to the first degree, which is the highest, of sparing the stage and the trial ; then three things are to be considered :

First, That they make such a submission or deprecation, as they prostrate themselves, and all that they have, at your majesty's feet, imploring your mercy.

REX. *This article cannot be mended in point thereof.*

Secondly, That your majesty, in your own wisdom, do advise what course you will take, for the utter extinguishing of all hopes of resuscitating of their fortunes and favour ; whereof if there should be the least conceit, it will leave in men a great deal of envy and discontent.

And lastly ; whether your majesty will not *suffer it to be thought abroad*, that there is cause of farther examination of Somerset, concerning matters of estate, after he shall begin once to be a confessant, and so make as well a politic ground, as a ground of clemency, for farther stay.

And for the second degree, of proceeding to trial, and

staying judgment, I must better inform myself by precedents, and advise with my lord chancellor.

The second case is, if that fall out which is likeliest, as things stand, and which we expect, which is, that the lady confess; and that Somerset himself plead not guilty, and be found guilty:

REX. *If stay of judgment can stand with the law, I could even wish it in this case: in all the rest this article cannot be mended.*

In this case, first, I suppose your majesty will not think of any stay of judgment, but that the public process of justice pass on.

Secondly, For your mercy to be extended to both for pardon of their execution, I have partly touched in the considerations applied to the former case; whereunto may be added, that as there is ground of mercy for her, upon her penitency and free confession, and will be much more upon his finding guilty; because the malice on his part will be thought the deeper source of the offence; so there will be ground for mercy on his part, upon the nature of the proof; and *because it rests chiefly upon presumptions.* For certainly there may be an evidence so balanced, as it may have sufficient matter for the conscience of the peers to convict him, and yet leave sufficient matter in the conscience of a king upon the same evidence to pardon his life; because the peers are astringed by necessity either to acquit or condemn; but grace is free: and for my part, I think the evidence in this present case will be of such a nature.

Thirdly, It shall be my care so to moderate the manner of charging him, as it might make him not odious beyond the extent of mercy.

REX. *That danger is well to be foreseen, lest he upon the one part commit unpardonable errors, and I on the other part seem to punish him in the spirit of revenge.*

Lastly, All these points of mercy and favour are to be understood with this limitation, if he do not, by his con-

temptuous and insolent carriage at the bar, make himself incapable and unworthy of them.

The third case is, if he should stand mute and will not plead, whereof, your majesty knoweth, there hath been some secret question.

In this case I should think fit, that, as in public, both myself, and chiefly my lord chancellor, sitting then as lord Steward of England, should dehort and deter him from that desperation; so nevertheless, that as much should be done for him, as was done for Weston; which was to adjourn the court for some days, upon a Christian ground, that he may have time to turn from that mind of destroying himself; during which time your majesty's farther pleasure may be known.

REX. *This article cannot be mended.*

The fourth case is that which I should be very sorry it should happen, but it is a future contingent: that is, *if the peers should acquit him* and find him not guilty.

In this case the lord Steward must be provided what to do. For as it hath been never seen, as I conceive it, that there should be any rejecting of the verdict, or any respiting of the judgment of the acquittal; so on the other side this case requireth, that because there be many high and heinous offences, though not capital, for which he may be questioned in the star-chamber, or otherwise, that there be *some touch of that* in general at the conclusion, by my lord Steward of England; and that therefore he be remanded to the Tower as close prisoner.

REX. *This is so also.*

For the matter of examination, or other proceedings, my lord chancellor with my advice hath set down.

To-morrow, being Monday, for the re-examination of the lady:

Wednesday next, for the meeting of the judges concerning the evidence:

Thursday, for the examination of Somerset himself, according to your majesty's instructions:

Which three parts, when they shall be performed, I will give your majesty advertisement with speed, and in the mean time be glad to receive from your majesty, whom it is my part to inform truly, such directions or significations of your pleasure as this advertisement may induce, and that with speed, because the time cometh on. Well remembering who is the person whom your majesty admitted to this *secret*, I have sent this letter open unto him, that he may take your majesty's times to report it, or shew it unto you; assuring myself that nothing is more firm than his trust, tied to your majesty's commandments.

Your majesty's most humble

and most bounden subject and servant,

FR. BACON.

The fifth letter is dated May 2, 1616, and is addressed to Sir G. Villiers. It is as follows, a few paragraphs relating to the subject of commendams being omitted.

SIR,

I have received my letter from his majesty with his marginal notes, which shall be my directions, being glad to perceive I understand his majesty so well. That same *little charm, which may be secretly infused* into Somerset's ear some few hours before his trial, was excellently well thought of by his majesty; and I do approve it both for matter and time; only if it seem good to his majesty, I would wish it a little enlarged: for if it be no more than to spare his blood, he hath a kind of proud humour which may overwork the medicine. Therefore I could wish it were made a little stronger, by giving him some hopes that his majesty will be good to his lady and child; and that time, when justice and his majesty's honour is once saved and satisfied, may produce farther fruit of his majesty's compassion: which was to be seen in the example of

Southampton, whom his majesty after attainder restored ; and Cobham and Gray, to whom his majesty, notwithstanding they were offenders against his own person, yet he spared their lives ; and for Gray, his majesty gave him back some part of his estate, and was upon point to deliver him much more. He having been so highly in his majesty's favour, may hope well, if he hurt not himself by his public misdemeanour.

For the person that should deliver this message, I am not so well seen in the region of his friends, as to be able to make choice of a particular ; my lord treasurer, the lord Knollys, or any of his nearest friends, should not be trusted with it, for they may go too far, and perhaps work contrary to his majesty's ends. Those which occur to me, are my lord Hay, my lord Burleigh, of England I mean, and Sir Robert Carre.

My lady Somerset hath been re-examined, and his majesty is found both a true prophet and a most just king in that scruple he made ; for now she expoundeth the word He, that should send the tarts to Elwys's wife, to be of Overbury, and not of Somerset ; but for the person that should bid her, she said it was Northampton or Weston, not pitching upon certainty, which giveth some advantage to the evidence.

Yesterday being Wednesday, *I spent four or five hours with the judges* whom his Majesty designed to take consideration with, the four judges of the king's bench, of the evidence against Somerset : they all concur in opinion, that the questioning and drawing him on to trial is most honourable and just, and that the evidence is fair and good.

Your true and devoted servant,

FR. BACON.

The sixth letter is dated May 5th, 1616, and is addressed to Sir G. Villiers. The whole of it relates to the trial of the Earl of Somerset.

SIR,

I am far enough from opinion, that the redintegration or resuscitation of Somerset's fortune can ever stand with his majesty's honour and safety; and therein I think I expressed myself fully to his majesty in one of my former letters; and I know well any expectation or thought abroad will do much hurt. But yet the *glimmering* of that which the king hath done to others, *by way of talk* to him, cannot hurt, as I conceive; but I would not have that part of the message as from the king, but *added by the messenger*, as from himself. This I remit to his majesty's princely judgment.

For the person, though he trust the lieutenant well, yet it must be some new man; for in these cases, that which is ordinary worketh not so great impressions as that which is new and extraordinary.

The time I wish to be the Tuesday, being the even of his lady's arraignment: for, as his majesty first conceived, I would not have it stay in his stomach too long, lest it sour in the digestion; and to be too near the time, may be thought but to tune him for that day.

I send herewithal the substance of that which I purpose to say nakedly, and only in that part which is of *tenderness*; for that I conceive was his majesty's meaning.

It will be necessary, because I have distributed parts to the two serjeants, as that paper doth express, and they understand nothing of his majesty's pleasure of the manner of carrying the evidence more than they may guess by observation of my example, which they may ascribe as much to my nature as to direction; therefore that his majesty would be pleased to write some few words to us all, signed with his own hand, that, the matter itself being tragical enough, bitterness and insulting be forboren; and that we remember our part to be to make him delinquent to the peers, and not odious to the people. That part of the evidence of the lady's exposition of the pronoun, *he*, which was first caught hold of by me, and afterwards by his majesty's singular wisdom and conscience excepted to,

and now is by her re-examination retracted, I have given order to serjeant Montague, within whose part it falleth, to leave it out of the evidence. I do yet crave pardon, if I do not certify touching the point of law for respiting the judgment, for I have not fully advised with my lord chancellor concerning it, but I will advertise it in time.

I send his majesty the lord steward's commission in two several instruments, the one to remain with my lord chancellor, which is that which is written in secretary-hand for his warrant, and is to pass the signet; the other, that whereunto the great seal is to be affixed, which is in chancery-hand: his majesty is to sign them both, and to transmit the former to the signet, if the secretaries either of them be there; and both of them are to be returned to me with all speed. I ever rest,

Your true and devoted servant,

FR. BACON.

The seventh letter is directed to Sir G. Villiers, and is dated May 16th, 1616. It is as follows:—

SIR,

Your Man made good haste; for he was with me yesterday about ten of the clock the forenoon. Since I held him.

The reason, why I set so small a distance of time between the use of the *little charm*, or, as his Maj^{ty} better terms it, the *evangile*, and the day of his trial notwithstanding His Maj^{ty}'s being so far off, as advertisement of success and order thereupon could not go and come between, was chiefly, for that his Maj^{ty}, from whom the overture of that first moved, did write but of a few hours, that this should be done, which I turned into days. Secondly, because the hope I had of effect by that mean, was rather of attempting him at his arraignment, than of confession before his arraignment. But I submit it to his Maj^{ty}'s better judgment.

The person, by your first description, which was without name, I thought had been meant of Packer; but now I perceive it is another, to me unknown, but, as it seemeth, very fit. I doubt not but he came with sufficient warrant to M^r Lieutenant to have access. In this I have no more to do, but to expect to hear from his Maj^{ty} how this worketh.

The letter from his Maj^{ty} to myself and the Serjeants I have received, such as I wished; and I will speak with the Commissioners, that he may, by the Lieutenant, understand his Maj^{ty}'s *care* of him, and the tokens herein of his Maj^{ty}'s *compassion* towards him.

I ever had a purpose to make use of that circumstance, that Overbury, the person murdered, was his Maj^{ty}'s prisoner in the Tower; which indeed is a strong pressure of his Maj^{ty}'s justice. For Overbury is the first prisoner murdered in the Tower, since the murder of the young Princes by Richard the Third, the tyrant.

I would not trouble his Maj^{ty} with any points of preamble, nor of the evidence itself, more than that part nakedly, wherein was the *tenderness*, in which I am glad his Maj^{ty} by his postils, which he returned to me, approveth my judgement.

Now I am warranted, I will not stick to say openly, I am commanded, not to *exasperate*, nor to aggravate the matter in question of the impoisonment with any other collateral charge of disloyalty, or otherwise; wherein, besides his Maj^{ty}'s principal intention, there will be some use to save the former bruits of Spanish matters.

There is a direction given to M^r Lieut^t by My Lord Chancellor and myself, that as yesterday M^r Whiting, the preacher, a *discreet* Man, and one that was used to Helwisse, should preach before the Lady, and teach her, and move her generally to a clear confession. That after, the *same* preacher should speak as much to him at his going away in private; and so proof to be made,

whether this good mean, and the last nights thoughts, will produce any thing. And that this day the Lieut^t should declare to her the time of her trial, and likewise of his trial, and persuade her, not only upon Christian duty, but as good for them both, that she deal clearly touching him, whereof no use can be made, nor need to be made, for evidence, but much use may be made for their comfort.

It is thought, that at the day of her trial the Lady will confess the indictment; which if she do, no evidence ought to be given. But because it shall not be a dumb shew, and for his Maj^{ty}'s honour in so solemn an Assembly, I purpose to make a declaration of the proceedings of this great work of justice, from the beginning to the end, wherein, nevertheless, I will be careful no ways to prevent or discover the evidence of the next day.

In this my Lord Chancellor and I have likewise used a *point of providence*; for I did forecast, that if in that narrative, by the connection of things, any thing should be spoken, that should shew him guilty, she might break forth into passionate protestations for his clearing; which, though it may be justly made light of, yet it is better avoided. Therefore, my Lord Chancellor and I have devised, that upon the entrance into that declaration she shall, in respect of her weakness, and not to add farther affliction, be withdrawn.

It is impossible, neither it is needful, for me, to express all the particulars of my care in this business. But I divide myself into all cogitations as far as I can foresee; being very glad to find, that his Maj^{ty} doth not only accept well of my care and advices, but that he applieth his directions so fitly, as guideth me from time to time.

I have received the Commissions signed.

I am not forgetful of the goods and estate of Somerset, as far as is seasonable to inquire at this time. My Lord

Coke taketh upon him to answer for the Jewels, being the chief part of his moveable value: and this, I think, is done with his Majty^{ys} privity. But My Lord Coke is a good Man to answer for it.

God ever preserve and prosper you. I rest, Your true and devoted serv^t

FR. BACON.

May 10. Friday at 7 of the clock in the morning [1616].

The following letter to the King, is without date, but it appears to have been written shortly before the Earl of Somerset's trial:—

It may please your Majesty,

We have done our best endeavours to perform your majesty's commission, both in matter and manner, for the examination of my lord of Somerset; wherein that which passed, for the general, was to this effect; That he was to know his own case, for that his day of trial could not be far off; but that this day's work was that which would conduce to your majesty's justice little or nothing, but to your mercy much, if he did lay hold upon it; and therefore might do him good, but could do him no hurt. For as for your justice, there had been taken great and grave opinion, not only of such judges as he may think violent, but of the most sad and most temperate of the kingdom, who ought to understand the state of the proofs, that the evidence was full to convict him, so as there needeth neither confession, nor supply of examination. But for your majesty's mercy, although he were not to expect we should make any promise, we did assure him, that your majesty was compassionate of him if he gave you some ground whereon to work; that as long as he stood upon his innocency and trial, your majesty was tied in honour to proceed according to justice; and that he little understood, being a close prisoner, how much the expectation of the world, besides your love to justice itself, engaged your

majesty, whatsoever your inclinations were: but nevertheless that a frank and clear confession might open the gate of mercy, and help to satisfy the point of honour.

That his lady, as he knew, and that after many oaths and imprecations to the contrary, had nevertheless in the end, being touched with remorse, confessed; that she that led him to offend, might lead him likewise to repent of his offence: that the confession of one of them could not fitly do either of them much good, but the confession of both of them might work some farther effect towards both: and therefore, in conclusion, we wished him not to shut the gate of your majesty's mercy against himself, by being obdurate any longer. This was the effect of that which was spoken, part by one of us, part by another, as it fell out; adding farther, that he might well discern *who* spake in us in the course we held; for that commissioners for examination might not presume so far of themselves.

Not to trouble your majesty with circumstances of his answers, the sequel was no other, but that we found him still *not to come any degree farther on to confess*; only his behaviour was very sober, and modest, and mild, differing apparently from other times, but yet, as it seemed, *resolved to have his trial*.

Then did we proceed to examine him upon divers questions touching the empoisonment, which indeed were very material and supplemental to the former evidence; wherein either his affirmatives gave some light, or his negatives do greatly falsify him in that which is apparently proved.

We made this farther observation; that when we asked him some question that did touch the prince or some foreign practice, which we did very sparingly at this time, yet he grew a little stirred, but in the questions of the empoisonment very cold and modest. Thus not thinking it necessary to trouble your majesty with any further particulars, we end with prayer to God ever to preserve your majesty.

Your majesty's most loyal and faithful servant,

FR. BACON.

Postscript. If it seem good unto your majesty, we think it not amiss *some preacher, well chosen*, had access to my lord of Somerset for his preparing and comfort, although it be before his trial.

A letter from Bacon to Sir G. Villiers, without date, contains the following paragraph, showing that Bacon designedly inserted in the Countess of Somerset's pardon a palpable untruth.

I send you inclosed a warrant for my Lady of Somerset's pardon reformed in that main and material point [that she was not a principal, but an accessary before the fact, *by the instigation of base persons*]. Her friends think long to have it despatched, which I marvel not at, for that in matter of life, moments are numbered.

The following papers of Sir F. Bacon, also relate to the Earl of Somerset's trial.

Questions legal for the Judges [in the case of the Earl and Countess of Somerset.]

WHETHER the ax is to be carried before the prisoner, being in the case of felony?

Whether, if the lady make any digression to clear his lordship, she is not by the lord Steward to be interrupted and silenced?

Whether, if my lord of Somerset should break forth into any speech *of taxing the king*, he be not presently by the lord Steward to be interrupted and silenced; and, if he persist, he be not to be told, that if he take that course, he is to be withdrawn, and evidence to be given in his absence? And whether that may be; and what else to be done?

Whether if there should be twelve votes to condemn,

and twelve *or thirteen* to acquit, it be not a verdict for the king?

Questions of Convenience, whereupon His Majesty may confer with some of his Council.

WHETHER, if Somerset confess at any time before his trial, his majesty shall stay trial in respect of farther examination, concerning practice of treason, as the death of the late prince, the conveying into Spain of the now prince, or the like; for till he confess the less crime, there is [no] likelihood of confessing the greater?

Whether, if the trial upon that reason shall be put off, it shall be discharged privately by dissolving the commission, or discharging the summons? Or, whether it shall not be done in open court, the peers being met, and the solemnity and celebrity preserved; and that with some declaration of the cause of putting off the farther proceeding?

Whether the days of her trial and his shall be immediate, as it is now appointed; or a day between, to see, if, after condemnation, the lady will confess of this lord; which done, there is no doubt but he will confess of himself?

Whether his trial shall not be set first, and hers after, because then any conceit, which may be wrought by her clearing of him, may be prevented; and it may be he will be in the better temper, hoping of his own clearing, and of her respiting?

What shall be the days; for Thursday and Friday can hardly hold in respect of the summons; and it may be as well Friday and Saturday, or Monday and Tuesday, as London makes it already?

A particular remembrance for his Majesty.

It were good, that after he is come into the Hall, so that he may perceive he must go to trial, and shall be

retired into the place appointed, till the court call for him, then the lieutenant should tell him roundly, that if in his speeches he shall tax the king, that the *justice of England* is, that he shall be taken away, and the *evidence shall go on without him*; and then all the people will cry *away with him*; and then it shall not be in the king's will to save his life, the people will be so set on fire.

Indorsed,

Memorial touching the course to be had in my lord of Somerset's arraignment.

THE HEADS OF THE CHARGE AGAINST ROBERT,
EARL OF SOMERSET.

Apostyle of the
king.

Ye will doe well to remember lykeweyes in your præamble that insigne, that the only zeal to justice maketh me take this course. I have commandit you not to expatiate, nor digresse upon any other points, that maye not serve clearlie for probation or inducement of that point, quhairof he is accused.

FIRST it is meant, that Somerset shall not be charged with any thing by way of aggravation, otherwise than as conduceth to the proof of the impoisonment.

For the proofs themselves, they are distributed into four:

The first to prove the malice, which Somerset bore to Overbury, which was the motive and ground of the impoisonment.

The second is to prove the preparations unto the impoisonment, by plotting his imprisonment, placing his keepers, stopping access of friends, &c.

The third is the acts of the impoisonments themselves.

And the fourth is acts subsequent, which do vehemently argue him to be guilty of the impoisonment.

For the first two heads, upon conference, whereunto I called serjeant Montagu and serjeant Crew, I have taken them two heads to myself; the third I have allotted to serjeant Montagu; and the fourth to serjeant Crew.

In the first of these, to my understanding, is the only *tenderness*: for on the one side, it is most necessary to lay a foundation, that the malice was a deep malice, mixed with fear, and not only matter of revenge upon his lordship's quarrel: for *periculum periculo vincitur*, and the malice must have a proportion to the effect of it, which was the impoisonment: so that if this foundation be not laid, all the evidence is weakened.

On the other side, if I charge him, or could charge him, by way of aggravation, with matters tending to disloyalty or treason, then he is like to *grow desperate*.

Therefore I shall now set down perspicuously what course I mean to hold, that your majesty may be pleased to direct and correct it, preserving the strength of the evidence: and this I shall now do, but shortly and without ornament.

First, I shall read some passages of Overbury's letters, namely these: "Is this the fruit of nine years love, common secrets, and common dangers?" In another letter: "Do not drive me to extremity to do that which you and I shall be sorry for." In another letter: "Can you forget him, between whom such secrets of all kinds have passed, &c.?"

Then will I produce Simcock, who deposeth from Weston's *speech*, that Somerset *told* Weston, that, *if ever Overbury came out of prison, one of them must die for it*.

Then I will say what these secrets were. I mean not to enter into particulars, nor to charge him with disloyalty, because he stands to be tried for his life upon another crime. But yet by some taste, that I shall give to the peers in general, they may conceive of what nature those secrets may be. Wherein I will take it for a thing notorious, that Overbury was a man, that always carried himself insolently, both towards the queen, and towards the

late prince : that he was a man, that carried Somerset on in courses separate and opposite to the privy council : that he was a man of nature fit to be an incendiary of a state : full of bitterness and wildness of speech and project : that he was thought also lately to govern Somerset, insomuch that in his own letters he vaunted, *that from him proceeded Somerset's fortune, credit, and understanding.*

This course I mean to run in a kind of generality, putting the *imputations rather upon Overbury* than Somerset; and applying it, that such a nature was like to hatch dangerous secrets and practices. I mean to shew likewise what jargons there were and cyphers between them, which are great badges of secrets of estate, and used either by princes and their ministers of state, or by such as practise against princes. That your majesty was called *Julius* in respect of your empire; the queen *Agrippina*, though Somerset now saith it was *Livia*, and that my lady of Suffolk was *Agrippina*; the bishop of Canterbury *Unctius*; Northampton, *Dominic*; Suffolk, first *Lerma*, after *Wolsey*; and many others; so as it appears they made a play both of your court and kingdom; and that their imaginations wrought upon the greatest men and matters.

Neither will I omit Somerset's breach of trust to your majesty, in trusting Overbury with all the dispatches, things, wherewith your council of estate itself was not many times privy or acquainted : and yet this man must be admitted to them, not cursorily, or by glimpses, but to have them by him, to copy them, to register them, to table them, &c.

Apostyle of the
king.

This evidence cannot be given in without making me his accuser, and that upon a

I shall also give in evidence, in this place, the slight account of that letter, which was brought to Somerset by Ashton, being found

very slight ground. As for all the subsequent evidences, they are all so little evident, as una litura may serve thaim all.

Nothing to Somerset, and declared by Franklin after condemnation.

Nothing to Somerset, and a loose conjecture.

No better than a gazette, or passage of Gallo Belgicus.

Nothing yet proved against Lowbell.

Nothing to Somerset.

in the fields soon after the late prince's death, and was directed to Antwerp, containing these words, "that the first branch was cut from the tree, and that he should, ere long, send happier and joyfuller news."

Which is a matter I would not use, but that my lord Coke, who hath filled this part with many frivolous things, would think all lost, except he hear somewhat of this kind. But this it is to come to the leavings of a business.

And for the rest of that kind, as to speak of that particular, that Mrs. Turner did at Whitehall shew to Franklin the man, who, as she said, poisoned the prince, which, he says, was a physician with a red beard.

That there was a little picture of a young man in white wax, left by Mrs. Turner with Forman the conjuror, which my lord Coke doubted was the prince.

That the viceroy of the Indies at Goa reported to an English factor, that prince Henry came to an untimely death by a mistress of his.

That Somerset, with others would have preferred *Lowbell* the apothecary to prince Charles.

That the countess laboured Forman and Gresham, the con-

jurors, to inforce the queen by witchcraft to favour the countess.

Declared by Franklin after condemnation.

That the countess told Franklin, that when the queen died, Somerset should have Somerset-house.

Nothing to Somerset.

That Northampton said, the prince, if ever he came to reign, would prove a tyrant.

Nothing to Somerset.

That Franklin was moved by the countess to go to the Palsgrave, and should be furnished with money.

The particular reasons why I omit them, I have set in the margin; but the general is partly to do a kind of right to justice, and such a solemn trial, in not giving that in evidence, which touches not the delinquent, or is not of weight; and partly to observe your majesty's direction, to give Somerset no just occasion of despair or flushes.

But I pray your majesty to pardon me, that I have troubled your majesty with repeating them, lest you should hear hereafter, that Mr. Attorney hath omitted divers material parts of the evidence.

Indorsed.

Somerset's business and charge, with his majesty's postiles.

In order the better to determine how far any reliance can be placed on the sincerity of Bacon's opinions, or the uprightness of his motives in any matter in which either King James or Villiers had wishes to gratify, it may be useful to collect a few testimonies of his servility and unscrupulous

devotion to them, taken from his own literary remains.

It is Bacon that makes the following offers of service to King James :—"I am afraid of nothing, but that the Master of the Horse and I shall fall out, who shall hold your stirrup best." "My heart is set on fire to sacrifice myself a burnt-offering, or holocaust to your Majesty's service." "I make a humble oblation of myself, without endeavouring to do you honour I would not live." "I account my life the accident, and my duty the substance." "I am *omnibus omnia*, as St. Paul says, to set forth your Majesty's service." "I shall be ready as a chessman to be placed wherever your Majesty's hand shall set me." "The King's state, if I should now die, and were opened, would be found at my heart, as Queen Mary said of Calais." "I rest as clay in your Majesty's hands." "I have ever been your man, and counted myself but an usufructuary of myself, the property being yours." "Things dedicated and vowed cannot lose their character, nor become common, I ever vowed myself to your service." "I desire that the thread of my life may be no longer than the thread of my service." "My desire to serve your Majesty is of the nature of the soul, that will be *ultimum moriens* with me." "I will pray for your Majesty to the last gasp."

On the occasion of scandalously tampering with the Judges, in Peacham's case, "I cannot skill

of scruples in your Majesty's service." After advising the King not to appoint Archbishop Abbot, or Sir Edward Coke to be Lord Chancellor, because "popular men are no sure mounters for your Majesty's saddle;" he puts himself forward as one who could present his Majesty with "gloria in obsequio," a phrase preserved by Tacitus to inform posterity of the degenerate servility with which a Roman senator addressed the Emperor Nero.

The following instances of servility of sentiment towards King James, also occur in Bacon's writings:—"Your care of me is, as Scripture says, 'God knows that are his.'" "Your Majesty imitateth Christ, by vouchsafing me to touch the hem of your garment." The preference of other candidates for honours to himself, Bacon compares to the "leaving of him lame for his Majesty's service, whilst the waters are stirred, and others are put in, and made whole by the King's miraculous power." On some service done to him, after his fall, by Prince Charles, he writes:—"The work of the Father is creation, of the Son redemption." After an interview with the King, he says, "I may now sing '*nunc dimittis*,' for before methought I was scant in a state of grace."

Of the superiority of the King's wisdom to his own, Bacon writes, "To your great wisdom I acknowledge myself not worthy to be a *card-holder* or a *candle-holder*." "I am but a bucket and

cistern to draw forth and conserve, whereas your Majesty is the fountain." "I should do wrong to your Majesty's *school* if in sixteen years access I had not learned or laid in something."

To Villiers, Bacon writes :—"Your case differeth from the case of other Favourites, in that you have both the King and Prince ; so in this, that you have now the hearts of the best *subjects*, for I do not love the word *people*." "I shall not take Martha's part to be busied in many things, but Mary's part, which is to intend your service." "I would rather sojourn in a College at Cambridge, than recover a good fortune by any other than yourself."

Bacon made a proposal to Villiers for writing a history of his journey to Spain, taken by him, under the assumed name of Mr. Thomas Smith, in company with Prince Charles, under that of Mr. John Smith, which had been undertaken with rashness, and terminated in a disreputable breach of honourable faith. This history, it may be observed, must necessarily have included Villiers's narrative of the treatment of the Prince and himself in Spain, delivered to the Parliament of England, whilst the Prince was standing at his side ; and yet Clarendon acknowledges that Villiers "knew a great part of the narrative to be untrue ;" and even Hume pronounces it an "infamous imposture." Bacon, when expressing a desire "to do honour to the journey with his pen," observes, that "it began

like a fable of the poets ; but it deserveth all in a piece a worthy narration.”

And if it be urged that this offer was made, and that some few of the above cited sentiments were expressed, after Bacon’s greatness of mind had been shattered by age and disgrace, and after he, in one of his letters, applies to his case the memorable words, “*Date obolum Belisario;*” it may be answered, that most of the obsequious language above quoted, is gathered out of a much larger collection of dicta of the same sort used by him in the meridian of his fame : And we may find still more numerous and more strong instances of servility, in which he revelled in the very dawn of his fortunes. It was in the reign of Elizabeth, that Bacon writes from Gorhambury to Lord Burghley, “*To do you service I will come out of my religion at any time.*”

That Villiers on many occasions availed himself of Bacon’s compliant and obsequious dispositions towards him, in order to serve his own ends at the sacrifice of justice towards individuals, and of duty to the State, can scarcely be doubted. The following letters from Villiers to Bacon, when Lord Chancellor, and various others of the same tenor, could never have been written, if the requests expressed or intimated in them had not been complied with ; at least, if the first epistle of the kind had been returned, as it ought to have been, with indignant reprobation.

TO THE LORD CHANCELLOR.

My Honorable Lord,

Though I had resolved not to write to your lordship in any matter between party and party, yet at the earnest request of my noble friend, the Lord Norris, I could not but recommend to your lordship's favor a special friend of his, Sir F. Monk, who hath a suit before your Lordship in the Chancery with Sir R. Basset, which, upon report made to me thereof seemeth so reasonable, that I doubt not but the cause itself will move your Lordship to favor him, if, upon the hearing thereof, it shall appear the same unto your lordship, as at the first sight it doth unto me. I therefore desire your lordship to shew, in this particular, what *favour* you lawfully may, for my sake, who will account it as *done unto myself*, and will ever rest, &c.

Sir F. Monk succeeded in his suit, and, after the decision, Bacon received from him "100 pieces."

TO THE LORD CHANCELLOR.

My Honorable Lord,

Having formerly moved your Lordship in the business of this bearer, Mr. Wyche, of whom, as I understand, your lordship hath had a special care to do him favour according to the equity of his cause: now, seeing that the cause is shortly to be heard, I have thought fit to continue my recommendation of this business unto you, desiring your lordship to show what *favour* you lawfully may unto Mr. Wyche, according as the justice of the cause shall require, which I will acknowledge as a *courtesy* from your lordship. And ever rest, &c.

TO THE LORD CHANCELLOR.

My Honorable Lord,

I have been entrusted by a gentleman, whom I much respect, to recommend to your lordship's favor Mr. John Huddy, between whom and Mr. R. Huddy there is, as I am informed, a cause to be heard before your lordship in the Chancery on Saturday next. My desire to your lordship is, that you would show the said John Huddy what *favor* you lawfully may, and the cause will bear, when it cometh before you, for *my sake*, which I will not fail to acknowledge. Ever resting, &c.

TO THE LORD CHANCELLOR.

My Honorable Lord,

I am desired by a special friend of mine to recommend to your lordship's favor the case of this petitioner, and have thought fit to desire you, for *my sake*, to show him all the *favor* you may in this his desire, as you shall find in reason to deserve, which I shall take as a *courtesy* from your lordship, and ever rest

Your lordship's &c.

P.S.—I thank your lordship for your *favor* to Sir J. Wentworth in the dispatch of his business.

TO THE LORD CHANCELLOR.

My Honorable Lord,

I having understood by Dr. Steward, that your lordship hath made a decree against him in Chancery, which he thinks very hard for him to perform: although I know it is unusual to your lordship to make any alterations, when things are so far past; yet in regard I owe him a good turn, which I know not how to perform but by this way, I desire your lordship, if there be any place left for mitigation, your lordship would show him what *favour* you may, for *my sake*, in his desires, which I shall

be ready to acknowledge as a good *courtesy* done to myself, and will ever rest,

Your lordship's &c.

TO THE LORD CHANCELLOR.

My Honorable good Lord,

Whereas, in Mr. Hansbye's cause, which, formerly, by my means, both *His Majesty and myself* recommended to your lordship's *favour*, &c., &c. These shall be earnestly to entreat your lordship, that, upon consideration of the report of the masters, and depositions of the witnesses, you will, for *my sake*, show as much *favor* and expedition to young Mr. Hansbye in this cause as the justice thereof will permit. And I shall receive it at your lordship's hands as a particular *favor*, and will ever rest, &c.

In another cause, in which Sir Rowland Cotton had been defeated, Buckingham writes to the Lord Chancellor:—"It now rests only in your Lordship's power for the assessing of costs; which, because I am certainly informed, Sir R. Cotton had just cause of complaint, I hope your Lordship will *not give any* against him."

Buckingham also wrote to the Chancellor on behalf of Sir R. Egerton; but his opponent had given Bacon £400 in a purse for a New Year's gift, and appears to have succeeded, for he sent Bacon £300 shortly after the case was terminated.

After this cursory view of Bacon's conduct, we cannot rely on his having followed the dictates of his own judgment in the proceedings relative to the murder of Overbury. In the speech delivered

by him in the Star Chamber, instead of inculcating a salutary caution lest the heinous nature of a crime should occasion hasty inferences being drawn for detecting it, Sir F. Bacon labours to aggravate the offence of poisoning by very unworthy artifices. For this purpose we find him inflaming the minds of his auditory, by an appeal to the religious controversy that was then raging, and exclaiming,—“It is neither of our country, or of our church; you may find in Rome or Italy; there is a Region or perhaps a Religion for it.”

Bacon further compromises his character with posterity as a scientific Jurist, by maintaining that to make poisoning a branch of the law of High Treason, was “a grave, judicious, and proper provision.” In his History of the Reign of Henry VII., he praises that Sovereign, because his laws are “deep and not vulgar, not made upon the spur of a particular occasion for the present, but out of providence for the future.” The Act of Henry VIII., which made poisoning High Treason, was a retrospective, as well as prospective law, framed on the *spur of the occasion* of one Rouse, a cook, who had put poison in a vessel of yeast, by which seventeen people were killed. Rouse being a cook, was ordered to be thrown into boiling water; and because a cook had occasioned the law, all future poisoners were to be boiled to death as cooks.

In the same speech, Sir F. Bacon introduces his figures of the whips and snakes of the Furies, by stating, that it “appeared by matter of record” how Sir T. Overbury was “chased to death by poison after poison.” In other words, he insinuates, that the various acts of poisoning alleged in Weston’s indictment, were to be taken as established by the verdict of a Jury: And, yet, according to the doctrine laid down at the Earl of Somerset’s trial, and which is law at the present day, the record might have contained the precise identical matter, although Weston had only been proved guilty of a single act of poisoning, and that a different one from any specified in his indictment. It was therefore a false and mischievous assertion, to affirm, that it “appeared of record that Sir T. Overbury was chased to death by poison after poison.”

The statement, that it is criminal for a person to say, that “if he were of the Jury, he would doubt what to do,” because this is to “prejudge the Jury, or to taint them, as a Prejuror or Post-juror,” was an audacious and unauthorized infringement on liberty of speech. The rule that questions may be allowed to be put to criminals at the place of execution, tending “to reveal their own guiltiness,” but that they cannot be asked, if they tend to “falsify a *res judicata*,” does not appear consonant to an impartial desire for the investiga-

tion of truth; although there may be sufficient reasons for prohibiting interrogations of any kind whatever upon the scaffold.

It was very unfair to say, in allusion to the Countess of Somerset, before her trial, and whilst she was still, by the law, presumed innocent, with reference to her noble family, "I think it be true that writers say, that there is no pomegranate so fair or so sound, but may have a perished kernel." The appeal to the "bells that rang" when Weston was convicted, was as inconsistent with propriety, as it was weak in argument.

The very different characters given by Sir F. Bacon, of Sir T. Overbury, in the Star Chamber speech, and at the Earl of Somerset's trial, would perplex a simple-minded reader, had not Sir F. Bacon, in a letter to the King, explained, that it was his policy, in the Earl's trial, to "cast the imputations rather upon Overbury than Somerset;" and so, in pursuance of this intention, he declared that Overbury was "naught," and "that the ballads must be amended:" whereas, in the Star Chamber, he had before said, that he was personally acquainted with Sir T. Overbury, and that "the greatest fault he ever heard by him, was that he made his friend his idol."

With regard to the general purport of Sir F. Bacon's letters, it is to be observed, in the first place, that whether Bacon supposed the Earl of Somerset innocent, but that the King's policy

required that he should be convicted, or whether he supposed the Earl guilty of murdering Overbury, his own conduct in the business must be regarded as infamous.

Perhaps upon the whole retrospect of the transactions connected with these proceedings, the former supposition may appear the more probable. In this point of view, the artful attempts to entrap the Earl of Somerset into making a confession, as a means of safety, if not also of restoration to royal favour; the selecting of a “a preacher, a discreet man,” for this purpose, and the “*tanquam obiter*” allusions addressed to the Earl in the Tower; together with the preliminary arrangements for the trial, would stamp Bacon as one of the most wicked men recorded in history, who have prostituted their consciences and talents in order to ruin a victim of royal caprice.

If, on the other hand, we assume that Bacon supposed Somerset to have been guilty of murdering Overbury, his baseness will appear to be scarcely less reprehensible. For we find him, long before the Earl’s trial, supplying the King with deceitful pretexts that “might satisfy his honour for sparing the Earl’s life.” Among which may be noted a suggestion as irrational with regard to the objects of human punishments, as its application to the case of an instigator of murder and his mercenary tools, is detestable, viz., “that the blood of Overbury is already avenged by divers

executions." As if vengeance was not only an admissible, but the sole object of the punishment of crimes, and, as if it mattered not, so long as the measure of vengeance was filled, whether a wretched hireling, or his insidious and malicious instigator became the victim of the law.

Perhaps there is not to be found a more disgraceful course of conduct in our judicial annals, than that which, under Bacon's own hand, we find that he pursued for modifying a prosecution, with an express view to a preconcerted pardon. He writes:—"It shall be my care so to moderate the manner of charging him, as it might make him not odious beyond the extent of mercy."

Bacon advised King James on the subject of the forms to be observed for putting to death Sir Walter Raleigh. He was at that time Lord-Keeper, and justified by his office in advising the King upon matters of conscience. The execution of Raleigh has consigned the memory of every one who was instrumental to it, to the obloquy of history in all future times: nevertheless, we do not find, in Bacon's correspondence with the King, a single intimation even, that to pardon Raleigh, (or rather not to execute him, for he had been virtually pardoned by a royal commission,) would be consistent with justice, with a fitting exercise of mercy, with a due sense of Raleigh's literary merits and military achievements, or a cordial sympathy with the feelings of the country, in which all poste-

rity were sure to participate. On the assumption we are considering that Bacon supposed Somerset to be guilty, what more stigmatizing epitaph could be engraved on his tomb, than that he advised and prepared the pardon of Somerset, and took an active part in the execution of Raleigh!

In any view of Bacon's opinions with regard to the Earl of Somerset, the reader may probably think that he does not know of a more scandalous case of double dealing and deceit, proved by the individual's own avowal, than that which is revealed in the letter to Villiers, in which Bacon writes:—"I am far enough from opinion, that the redintegration or resuscitation of Somerset's fortune can ever stand with his Majesty's honour and safety, &c. But, yet, the *glimmering* of that which the King hath done to others, *by way of talk* to him, cannot hurt as I conceive; but I would not have that part of the message as from the King, but added by the messenger as from himself. This I remit to his Majesty's princely judgment." Bacon here professes that the restoration of Somerset to favour, was not to be thought of: but that it was politic to intimate to him that he would be restored to favour, if he complied with the King's wishes. And, moreover, although the King was to be a party to the making of this communication to Somerset, yet a loop-hole was to be left, through which James might escape from performing what was promised, by means of the paltry device of the

expectations being held out by the messenger as from himself, and not as from the King.

Bacon's dissimulation is further manifested upon the Countess of Somerset's arraignment, by what he calls a "point of providence" between the Lord Chancellor and himself. "I did forecast that, if in that narrative, by the connection of things any thing should be spoken, that should show the Earl guilty, she might break forth into passionate protestations for his clearing. Therefore, my Lord Chancellor and I have devised, that, upon the entrance into that declaration, she shall, in *respect of her weakness*, and *not to add further affliction*, be withdrawn." This scheme was in effect one for evading impressions that might be made in the Earl's favour, by withdrawing the Countess upon a false and hypocritical pretext.

In the conduct of the prosecution against the Earl of Somerset, it is manifest that Bacon lent himself to pervert the even course of justice, in order to prevent the Earl from making some disclosures at his trial which the King anxiously deprecated. The details relating to the communication of the "little charm," or "evangile," the selecting of a "new man" to be the bearer of it, because "that which is ordinary worketh not so great impressions as that which is new and extraordinary," the time chosen, "so as not to stay in the stomach too long, lest it sour in the digestion," and not to be too near the day

of the trial, lest the King's motive, in "tuning the Earl," should be too palpable, are among the most despicably cunning things we know to have been ever practised or devised by any public man in judicial matters.

Of the same nature is the letter which Bacon suggested should be written to himself and the counsel for the prosecution; the care taken to "sweeten the cup of medicine," and to let Somerset "understand, by the Lieutenant, his Majesty's care of him, and the tokens of his Majesty's compassion towards him." The many precautions affecting even the arguments which were to be offered to the Peers, lest the Earl of Somerset should "grow desperate," "have just occasion of despair or flushes," or "break forth into some speech taxing the King."

These insidious practices are of the same character with the mean artifice devised by Bacon in Peacham's case, with regard to which he writes to the King: "I think it were not amiss to make a *false fire*, as if all things were ready for his going down to trial, and that he were upon the very point of being carried down, to see what *that* will work with him."

Notwithstanding Sir F. Bacon was so deeply confederating with King James to tamper with the justice of the country, he seized every opportunity of lavishing hyperbolical eulogy on the English Solomon, affirming that his royal speeches in re-

gard to the investigation of Overbury's murder deserved to be written in "letters of gold," quoting Scripture to illustrate that the King in prosecuting Somerset had "pulled off the signet from his hand," and affirming that the King's reputation throughout the inquiries had been like "the coat of Christ, without seam." It is difficult, indeed, to imagine any statement so diametrically opposite to the truth as the one in which Sir F. Bacon blasphemously ascribes to King James, that, in his conduct with regard to the Earl of Somerset, (on the supposition of his guilt, which is assumed by Bacon,) "he had shown to the world, as if it were written in a sunbeam, that he was the Lieutenant of *Him* with whom there is no respect of persons."

The insertion of the allegation in the Countess of Somerset's pardon, on which the propriety of it is vested, that she was led to be an accessory to murder "by the instigation of base persons," is an attempt, on the part of King James and Bacon, to disguise a scandalous perversion of the prerogative, by a falsehood reflecting deep dishonour on the Chancellor who forged it, and the Sovereign who gave it currency.

Bacon's disregard of truth in the matter of the pardon renders it less difficult to believe that he gave a fictitious relation of the discovery of the plot, in which, it has been noticed, he ascribed it to have arisen out of a conversation between my Lord of Shrewsbury, "who is now with God," and a

counsellor of State, contrary to what has been stated by several respectable authorities.

Sir Michael Foster, after mentioning Bacon's own account of his sifting the opinions of the Judges in Peacham's case, observes, "Is it possible that a gentleman of Bacon's great talents could submit to a service so much below his rank and character. But he did submit to it, and acquitted himself notably in it. Avarice, I think, was not his ruling passion. But, whenever a false ambition, ever restless and craving, overheated in the pursuit of the honor which the crown alone can confer, happeneth to stimulate an heart otherwise formed for great and noble pursuits, it hath frequently betrayed it into measures full as mean as avarice itself could have suggested to the wretched animals who live and die under her dominion. For these passions, however they may seem to be at variance, have ordinarily produced the same effects. Both degrade the man, both contract his views into the little point of self-interest, and equally steel the heart against the rebukes of conscience, or the sense of true honor. Bacon having undertaken the service, informeth his Majesty in a letter addressed to him, that with regard to three of the Judges whom he nameth, he had small doubt of their concurrence. 'Neither, saith he, am I wholly out of hope, that my Lord Coke himself, when I have in some *dark manner* put him in doubt that he shall be left alone, will not continue singular.'

These are plain naked facts, they need no comment. Every reader will make his own reflections upon them. I have but one to make in this place. This method of forestalling the judgment of a Court in a case of blood then depending, at a time, too, when Judges were removable at the pleasure of the Crown, doth no honor to the memory of the persons concerned in a transaction so insidious and unconstitutional; and at the same time greatly weakeneth the authority of the judgment."

It is manifest from Sir F. Bacon's letters, that he practised the same *auricular* mode of taking judicial opinions in the Earl of Somerset's case, which Sir M. Foster denounces in such just terms of reprobation. In one letter he writes that he spent "four or five hours with the Judges whom his Majesty designed to take consideration with the four Judges of the King's Bench of the evidence against Somerset." In another, he writes, that upon a conference with the Judges on Somerset's case, "I was bold at that meeting to put my Lord Chief Justice a posing question."

The transactions in regard to the murder of Sir T. Overbury, whilst they exhibit so many dark and foul spots which disfigure the greatness of Sir F. Bacon's mind, afford ample proof of his penetrating knowledge of human nature, and of his powers of arranging a multitude of complicated facts, in a manner that they might receive mutual

light from each other, and that their collective effects might be comprehended without perplexity. We have the authority of Ben Jonson, writing when it was no longer an object with any one to flatter Bacon, that we may now think of him, as *Æschines* said of *Demosthenes*, "how much greater would he have appeared to us, if we had heard him!" "There happened," writes Ben Jonson of Bacon, "in my time, one noble speaker, who was full of gravity in his speaking. His language (where he could spare or pass by a jest) was nobly censorious. No man ever spoke more greatly, more precisely, more weightily, or suffered less emptiness, or less idleness in what he uttered. No member of his speech but consisted of its own graces. His hearers could not cough or look aside from him without loss. He commanded where he spake; and had his judges angry or pleased at his devotion. No man had their affections more in his power. The fear of every man who had heard him was, least he should make an end*."

* Ben Jonson's "Discoveries."—In the same work he writes of Bacon:—"My conceit of his person was never increased towards him by his place or honors; but I have and do reverence him, for the greatness that was only proper to himself, in that he seemed to me ever, by his work, one of the greatest men, and most worthy of admiration that had been in many ages. In his adversity I ever prayed that God would give him strength, for greatness he could not want. Neither could I condole in a word or syllabl for him, as knowing no accident could do harm to

For a narrow-minded and illiberal sarcasm on one of the most distinguished works of the human understanding we may regard the sneer in a distich, which Sir E. Coke penned on the fly-leaf of

virtue, but rather help to make it manifest." In Bacon's prosperity, Ben Jonson addressed to him one of the most elegant and classical of his "Underwoods."

ON LORD BACON'S BIRTHDAY.

Hail, happy *Genius* of this ancient pile !
 How comes it all things so about thee smile ?
 The fire, the wine, the men ! and in the midst
 Thou stand'st as if some mystery thou did'st !
 Pardon, I read it in thy face, the day
 For these returns, and many, all these pray :
 And so do I. This is the sixtieth year,
 Since Bacon, and thy Lord was born, and here ;
 Son to the grave wise Keeper of the Seal,
 Fame and foundation of the English weal.
 What then his father was, and since is he,
 Now with a title more to the degree :
 England's high Chancellor : the destin'd heir
 In his soft cradle, to his father's chair :
 Whose even thread the Fates spin round and full
 Out of their choicest and their whitest wool.
 'Tis a brave cause of joy, let it be known,
 For 'twere a narrow gladness, kept thine own.
 Give me a deep-crown'd bowl, that I may sing,
 In raising him the wisdom of my King.

Another poet, very eminent in his day, has eulogised Bacon, but with the *curious infelicity* of conceit peculiar to his muse. Cowley writes:—

Bacon, at last, a mighty man ! arose,
 Whom a wise King and Nature chose,
 Lord Chancellor of both their laws.
 He boldly undertook the injur'd pupil's cause.

his presentation copy of the *Instauratio magnâ*, still preserved at Holkham :—

Ex dono auctoris.

Auctori consilium :

Instaurare petis veterum monumenta sophorum ;

Instaura leges, justitiamque prius.

But the imputation, that law and justice required some *restoration* after dilapidations which they had sustained at the hands of Bacon, may appear not altogether unmerited. For in the course of the proceedings against the Earl of Somerset, and in the torturing of criminals, mentioned in a former chapter, as well as on various other occasions, it may be said of him, (to use a metaphor of his own,) that he turned aside, like Atalanta, from the triumphant career of his exalted genius, to pick up glittering objects of worldly advantage, and thereby failed of leaving behind him a name as unblemished as it is immortal.

CHAPTER VII.

CONDUCT OF KING JAMES IN THE PROCEEDINGS RELATIVE TO THE GREAT OYER OF POISONING.

IN order to form a correct judgment concerning King James's conduct with regard to the Great Oyer of Poisoning, it is necessary to advert to several circumstances that have not yet been mentioned, and which occurred some before and some after the conviction of the Earl of Somerset.

There is a passage in Weldon's history which places the King's alarm about some revelation being made by Somerset in a more striking point of view even than that presented in Sir F. Bacon's letters. Sir A. Weldon writes as follows :

And now for the last act enters Somerset himselfe on the stage, who (being told, as the manner is, by the lieutenant, that he must provyde to goe next day to his tryal) did absolutely refuse it, and said, they should carry him in his bed ; that the king had assured him he should not come to any tryal, neither durst the king bring him to tryal. This was in an high strain, and in a language not well understood by Sir George Moore, (then lieutenant in Elwaies his room,) that made Moore quiver and shake ; and however he was accounted a wise man, yet he was neare at his wits end.

Yet away goes Moore to Greenewich, as late as it was (being twelve at night) bounseth at the back stayres as

if mad, to whome came Jo. Loveston, one of the grooms, out of his bed, enquires the reason of that distemper at so late a season. Moore tells him he must speak with the king. Loveston replies, "He is quiet," (which, in the Scottish dialect, is fast asleep.) Moore says, "You must awake him." Moore was called in, (the chamber left to the king and Moore.) He tells the king those passages, and desired to be directed by the king, for he was gone beyond his owne reason, to heare such bold and undutiful expressions from a faulty subject against a just sovereigne. The king falls into a passion of tears: "On my soule, Moore, I wot not what to do! thou art a wise man, help me in this great straight, and thou shalt finde thou dost it for a thankful master," with other sad expressions. Moore leaves the king in that passion, but assures him he will prove the utmost of his wit to serve his majesty; and was really rewarded with a suit worth to him 1500*l.*, (although Annandale, his great friend, did cheat him of one half; so was there falsehood in friendship.)

Sir George Moore returns to Somerset about three next morning, of that day he was to come to triall, enters Somersets chamber, tells him he had been with the king, found him a most affectionate master unto him, and full of grace in his intentions towards him: "But, (said he,) to satisfie justice, you must appeare, although returne instantly againe, without any further proceedings, only you shall know your enemies and their malice, though they shall have no power over you." With this trick of wit he allayed his fury, and got him quietly, about eight in the morning, to the hall; yet feared his former bold language might revert againe, and being brought by this trick into the toile, might have more inraged him to fly out into some strange discovery; for prevention whereof he had two servants placed on each side of him, with a cloak on their arms, giving them withall a peremptory order, if that Somerset did any way fly out on the king, they should instantly hood-wink him with that cloak,

take him violently from the bar, and carry him away; for which he would secure them from any danger, and they should not want also a bountiful reward. But the earle, finding himselfe over-reached, recollected a better temper, and went on calmly in his tryall, where he held the company untill seven at night. But who had seen the kings restlesse motion all that day, sending to every boat he saw landing at the bridge, cursing all that came without tidings, would have easily judged all was not right, and there had been some grounds for his feares of Somersets boldnesse; but at last one bringing him word he was condemned, and the passages, all was quiet. This is the very relation from Moores owne mouth, and this told *verbatim*, in Wanstead Parke, to two gentlemen (of which the author was one) who were both left by him to their own freedome, without engaging them, even in those times of high distemperatures, unto a faithful secrecie in concealing it; yet, though he failed in his wisdom, they failed not in that worth inherent in every noble spirit, never speaking of it till after the kings death.

A remarkable confirmation of the truth of this relation, as far as it concerns the secret communications between the King and More, is to be found in the Losely Papers. These papers consist of letters in King James's handwriting, which the King wrote to Sir George More who succeeded Helwyssse as Lieutenant of the Tower. They were first published in the year 1835 by A. I. Kemp, Esq., and the original letters are stated by him to have been then in the possession of James More Molyneux, Esq., of Losely, Surrey. They have been preserved by Sir G. More's family, and were found carefully enclosed in an envelope, on

which, in the handwriting of the early part of the seventeenth century, is the following memorandum.

These four letters were all in King James his own handwriting, sent to Sir George More, Lieut. of the Tower (being put into that place by his own appointment, without the privity of any man), concerning Mylord Somerset, who being in the Tower and hearing that he should come to his arraignment, began to speak big words touching on the King's reputation and honor. The King therefore desired, as much as he could, to make him confess the poisoning of Sir Thomas Overbury, and so not to come to his arraignment, but to cast himself on his mercy. But being a Courtier and beaten to these courses, would not; fully imagining, that the King durst not or would not bring him to his trial. The Gentleman the king sent in one of the letters to Mylord, was Walter James, some time Mylord's Secretary. But the King, although he was the wisest to work his own ends that ever was before him, for all that could not work on Somerset. But that he ever stood on his innocency, and would never be brought to confess that he had any hand with his wife in the poisoning of Overbury, knew not of it, nor consented unto it. And I have often talked with Mr. James, his chief servant, about it, who ever was of opinion that Mylord was clear, and his Lady only guilty, for one time Mrs. Turner told him, that little did Mylord know what she had adventured for his Lady: but the truth is, King James was weary of him; Buckingham had supplied his place.

In another part of the envelope were added these words:

Sir George More's, my Father-in-law's, legacy, who in his life-time made much account of these letters, being every word King James his own writing.

King James's Letters are as follow:—

KING JAMES TO SIR GEORGE MORE.

1616, May 9.

Good Sir George,

As the only confidence I had in your honesty made me, without the knowledge of any, put you in that place of trust, which you now possess, so must I now use your trust and secrecy in a thing greatly concerning my honor and service. You know Somerset's day of trial is at hand, and you know also what fair means I have used to move him by confessing the truth, to honor God and me, and leave some place for my mercy to work upon. I have now at last sent the bearer hereof, an honest Gentleman, and who once followed him, with such directions unto him, as, if there be a *sponke* of grace left in him, I hope they shall work a good effect. My only desire is, that you would make his convoy unto him in such secrecy, as none living may know of it, and that, after his speaking with him in private, he may be returned back again as secretly. So, reposing myself upon your faithful and secret handling of this business, I bid you heartily farewell.

JAMES R.

(Indorsed in Sir G. More's hand.)

9th of May, about one of the clock in the afternoon,
1616.

KING JAMES I. TO SIR G. MORE.

1616. May 13.

Good Sir George,

Although I fear that the last message I sent to your unfortunate Prisoner shall not take the effect that I wish it should, yet, I cannot leave off to use all means possible to move him to do that which is both most honorable for me, and his own best. You shall therefore give him assurance in my name, that if he will yet before his trial confess clearly unto the Commissioners his guiltiness of this fact, I will not only perform what I promised by my last Mes-

senger, both towards him and his wife, but I will enlarge it, according to the phrase of the civil law, *quòd gratiæ sunt ampliandæ*. I mean not that he shall confess if he be innocent, but you know evil likely that is, and of yourself you may dispute with him, what should mean his confidence now to endure a trial, when as he remembers, that this last winter he confessed to the Chief Justice that his cause was so evil likely, as he knew no jury could acquit him. Assure him that I protest upon my honor, my end in this is for his and his wife's good; you will do well, likewise, of yourself to cast out unto him, that you fear his wife shall plead weakly for his innocency, and that you find the Commissioners have, you know not how, some secret assurance that in the end she will confess of him; but this must only be as from yourself, and therefore you must not let him know that I have written unto you, but only that I sent you private word to deliver him this Message. Let none living know of this, and if it take good effect, move him to send in haste for the Commissioners to give them satisfaction, but if he remain obstinate, I desire not that you should trouble me with an answer, for it is to no end, and no news is better than evil news; and so farewell, and God bless your labours.

JAMES R.

(Indorsed in Sir G. More's writing.)
13 of May 1616.

KING JAMES I. TO SIR G. MORE.
(without date.)

Good Sir George,

I am extremely sorry, that your unfortunate prisoner turns all the great care I have of him, not only against himself, but against me also, as far as he can. I cannot blame you, that you cannot conjecture what this may be, for God knows it is only a trick of his idle brain, hoping thereby to shift his trial; but it is easy to be seen that he would threaten me with laying an aspersion upon me of

being in some sort accessory to his crime. I can do no more (since God so abstracts his grace from him), than repeat the substance of that letter which the Lord Hay sent you yesternight, which is this: if he would write or send me any message concerning this poisoning it needs not be private; if it be of any other business, that which I cannot now with honour receive privately, I may do it after his trial, and serve the turn as well; for except either his trial or confession præcede, I cannot hear a private message from him, without laying an aspersion upon myself of being accessory to his crime, and I pray you to urge him by reason, that I refuse him no favour which I can grant him, without taking upon me the suspicion of being guilty of that crime whereof he is accused; and so farewell.

JAMES R.

KING JAMES I. TO SIR G. MORE,

(without date.)

Good Sir George,

For answer to your strange news, I am first to tell you, that I expect the Lord Hay and Sir Robert Carr have been with you before this time, which if they have not yet been, do you send for them in haste, that they may first hear him, before you say anything unto him, and when that is done, if he shall still refuse to go, you must do your office, except he be either apparently sick or distracted of his wits, in any of which cases, you may acquaint the Chancellor with it, that he may adjourn the day till Monday next, between and which time, if his sickness or madness be counterfitted, it will manifestly appear. In the mean time, I doubt not but you have acquainted the chancellor with this strange fit of his, and if upon these occasions you bring him a little later than the hour appointed, the chancellor may in the mean time protract the time the best he may, whom I pray you to acquaint likewise with this my answer, as well as with the accident.

If he have said anything of moment to the Lord Hay, I expect to hear of it with all speed; if otherways, let me not be troubled with it till the trial be past. Farewell.

JAMES R.

(Superscribed in another hand.)

To our Trusty and Wellbeloved
Sir George More, kn^t, our
Lieut^t of our Tower of
London.

Somerset very shortly after his trial addressed a mysterious letter to the King, entreating the King's favour, of which the following are extracts :

To this I may add, that whereupon I was judged, even the crime itself might have been none, if your majesty's hand had not once touched upon it, by which all access unto your favour was quite taken from me. Yet as it did at length appear, *I fell rather for want of well defending, than by the violence or force of any proofs*; for I so far forsook myself, and my cause, as that it may be a question whether I was more condemned for that, or for the matter itself, which was the subject of that day's controversy.

And as in my former letters, so by this, I humbly crave of your majesty, not to let the practicers of court work upon your son the prince, not fearing the sufferings of my loss in that particular so much (for I cannot lose it but willingly all with it), as for to take off the stage, that which in the attempt may prove inconvenient.

I will say no further, neither *in that which your majesty doubted my aptness to fall into; for my cause nor my confidence is not in that distress, as for to use that mean of intercession* or any thing besides; but to remember your majesty that I am the workmanship of your hands, and bear your stamp deeply imprinted in all the characters of favour; that I was the first plant ingrafted by your

majesty's hand in this place, therefore not to be unrooted by the same hand, lest it should taint all the same kind with the touch of that fatalness.

King James interfered to prevent the Earl of Somerset's being further degraded, after his conviction, by the taking down of the heraldic arms belonging to him as a Knight of the Garter. The following contemporary letter shows the opinions entertained on this matter, and generally on the treatment of the Earl and Countess of Somerset after their trials:

My very good Lord,

I was glad to understand by your letters of the first present, how forward you were upon your journey towards the Spa: hoping you shall there find that good, which that place usually affords, and seldom failes in those affections of the Stone and Spleen. I have made longer stay in Town than I meant, by reason the Lady Winwood hath been here these eight or ten days, and this day sevenight she and the Lady Vere together with Sir Robert Hanton (the new Master of Requests) were gossips to Mr. Packer's young daughter. The Lady Lake and the Lady Exester have both brought daughters, and Sir Edward Montague hath a young son, which *sets our Recorder's nose somewhat a wrye*. The widow Lady Wroth has lost her little son, whereby that inheritance is fallen to John Wroth oldest uncle of the heir deceased. The small-pox hath taken away the Lady Turnell sister to the Countess of Excester. *The new Knights of the Garter*, the Earl of Rutland, Sir George Villars and the Lord Lisle were installed at Windsor the seventh of this present, and there was a Chapter held *about the taking down or continuing of the Earl of Somerset's Hatchments or Arms*, but after long dispute, *by warrant under the King's own hand*, they were

removed higher as the manner is when new come in. The Lord Hays the week and very day before his departure made many allees and venues twix the King and him, which was the more noted, for that he was the first that openly fell from him, and now belike, finding the wind coming about, applies himself to it, for he is known to be a cunning observer, and quo non sagatior alter Principis affectus rimari. The success of these errands is already come thus far, that yesterday he had the liberty of the Tower granted him, & Henrickson and his wife had the fortune to see him *with his Garter and George about his neck* walking and talking with the Earl of Northumberland, and he and his Lady saluting at the window. It is much spoken of, how foreign princes of that order (to let our own pass) can digest to be coupled in society with a Man lawfully and publicly convicted of so foul a fact, or how a Man civilly dead, and corrupt in blood, and so no Gentleman should continue a Knight of the Garter, but this age affords things as strange and incompatible. The Lady's pardon was signed the other week, this day seven-night; I saw it, and I had it in my hand before it went to the seal. The special reasons and inducements for it were four: the great and long services of her father, family and friends, her own penitence and voluntary confessions, both before her arraignment and at the Bar, the promise of the Lord Steward and Peers to intercede for her, and lastly that she was not principal, but accessory before the fact, and drawn to it by the instigation of base persons. But it seems the common people take not this for good payment, for on Saturday last the Queen with the Countess of Darbie, the Lady Ruthen and the Lord Carew coming privately in Coach to see somewhat here in Town, there grew a whispering that it was the Lady of Somerset and her mother, whereupon people flocked together and followed the Coach in great numbers railing and reviling, and abusing the footman, and putting them all in fear, neither would they be otherwise persuaded till they saw them enter into Whitehall, though the Countess disco-

vered herself and talked a pace to them, and the Lord Carew w^{ld} have gone out of the coach to satisfy them, but that the Queen would not suffer him least he could not have got in again.”

(After detailing some more gossip of the Court the letter concludes). “So with all due remembrance to Mylady, I commend you to God’s high protection. From London this 20th of July 1616.

Your Lordp^s to command,
JOHN CHAMBERLAIN.

[Address.] To the Right Hon^{ble} Sir Dudley Carleton Kn^t, Lord Ambassador for his Maj^{ty} with the States of the United Provinces at the Hag^h*.

Wilson relates some very disgusting particulars of the Countess of Somerset’s last illness, and it may be thought that his attachment to the Earl of Essex may have led him to exaggerate the loathsome character of her disorder. Upon his authority rests the statement, that “for several years previous to the Countess’s death, the Earl and Countess were inflamed by bitter hatred against each other, and, though they resided in the same house, they never held any discourse or intercourse with each other.”

Some curious papers have been published in the *Archæologia* of the Antiquarian Society, from which it appears that James consulted Somerset, long after the trial, concerning the proceedings of Villiers, whose insolence had awakened the jealousy and apprehensions of the Sovereign who

* State-Paper Office, Domestic Papers, 1616, July 20, No. 194.

had spoiled him by his unmeasured favour. The papers alluded to were found by Lord Sinclair at Nesbit House in Berwickshire, when he became possessed of that ancient seat of the Carr family. They were inclosed in a small box with other family papers. Two of the papers which are addressed to King Charles, are written in letters of gold, and are endorsed in the Earl of Somerset's handwriting. A third paper is apparently a fair copy, by a secretary, of a letter from the Earl to King James concerning Villiers. It commences thus:—

MOST GRACIOUS KING,

Those things which your Majesty did lately command to be spoken unto you and now to be reflected unto you by writing are not such as can be made clearly to appear by legal and judicial proofs &c. It cannot be unknown to your Majesty that the Duke of Buckingham carrieth himself so loftily, that he would have all men persuaded that he hath and doth exercise a kind of dominion over the will of his Majesty and of his Highness &c. Whose heady spirit your Majesty saith you have noted and have desired to mitigate &c

The letter concludes thus:—

“It only remaineth that your Majesty will be pleased to take in good part this my service and obedience showed to your commandments.”

In Bacon's celebrated expostulation with Sir Edward Coke, there is a remarkable passage indicating that the poisoning of Overbury was

a detached part of an extensive system of secret poisoning, to which the examinations taken by Sir Edward afforded a clue that had not been duly followed out. The passage is as follows:—

In your last, which might have been your best, piece of service to the state, affectioned to follow that old rule, which giveth justice leaden heels and iron hands, you used too many delays till the delinquents hands were loosed, and yours bound: in that work you seemed another Fabius, where the humour of Marcellus would have done better; what need you have sought more evidences than enough? while you pretended the finding out of more, missing your aim, you discredited what you had found. This best judgments think; though you never used such speeches as are fathered upon you, yet you might well have done it, and but rightly; for this crime was second to none, but the powder-plot: that would have blown up all at one blow, a merciful cruelty; this would have done the same by degrees, a lingering but a sure way; one might by one be called out, till all opposers had been removed.

Besides, that other plot was scandalous to Rome, making popery odious in the sight of the whole world; this hath been scandalous to the truth of the whole gospel; and since the first nullity to this instant, when justice hath her hands bound, the devil could not have invented a more mischievous practice to our state and church than this hath been, is, and is like to be. God avert the evil.

But herein you committed another fault: that as you were too open in your proceedings, and so taught them thereby to defend themselves; so you gave them time to undermine justice, and to work upon all advantages both of affections, and honour, and oppor-

tunity, and breach of friendship; which they have so well followed, sparing neither pains nor costs, that it almost seemeth an higher offence in you to have done so much indeed, than that you have done no more: you stopt the confessions and accusations of some, who perhaps, had they been suffered, would have spoken enough to have removed some stumbling-blocks out of your way; and that you did not this in the favour of any one, but of I know not what present unadvised humours, supposing enough behind to discover all: which fell not out so. Howsoever, as the apostle saith in another case, you *went not rightly to the truth*; and therefore, though you were to be commended for what you did, yet you were to be reprehended for many circumstances in the doing; and doubtless God hath an eye in this cross to your negligence, and the briers are left to be pricks in your sides and thorns in your eyes.

With reference to this subject, a paper in Sir E. Coke's handwriting contains the following memoranda.

May Day before the Prince's death at Highgate.

M^{rs} Brettayn who entertained the Prince at that time a Papist.

1. How long in Holborne.
2. Who spake to him to furnish a banquet for the Prince on May Day was three years? Who paid for it?
3. Where was it?
4. Who wrought it?
5. Who carried it?
6. Who were present at the Banquet?
7. What fruit was given him at the Banquet?
8. Dried Grapes.
9. M^{rs} Bretteins.

My good Lord,

By me Thomas Packwood Merchant Tailor at the sign
of _____ of Warwick, on the back side the
Royal Exchange in London.*

She that she had dwelt in high Holborn about 18 years.

* State-Paper Office, Domestic Papers, 1615, Nov. 18, No. 299.

years on *Mayday* came to this examinats house in Holborn, and called her up presently to provide a Banquet for the Prince that is dead and for the Prince that now is, both of them *going a Maying* to Highgate with many others.

Which Banquet was carried away by 4 of the clock having scarce time to dish it out, and said that Mr. Pullen Mr. Dixe and Mr. Arden were then at the dishing of it out carried them away in a Coach, and this examinant went with them in the Coach. And the Banquet was all of dried fruit and rough candied. And the Banquet was set on the table about six of the clock in the morning.

She confessed, that she thinks the Catholic religion is the best, and that she never came to Church this sixteen years or thereabouts; and said that Biscuit Bread was sliced and served out of the house to the banquet which was none of this Examinants as she takes it.

SUZAN SAWLLE.

Exam: per
Edw. Coke.

And as to this matter of Prince Henry's death, there is a curious circumstance illustrative of the uncertainty of historical evidence regarding discourses and speeches. In Bacon's *expostulation* with Sir E. Coke, he writes to him thus: "Though you never used such speeches as are fathered upon you." Speeches, however, on the subject of the Prince's death as connected with the murder of Sir T. Overbury, are attributed to Sir E. Coke by several contemporary writers, some of them relating their general effect, and others giving the very words, and all representing that the King was highly displeased at the subject being introduced. Sir A. Weldon relates that Sir E. Coke

said, "God knows what became of that sweet babe, Prince Henry, but I know somewhat." Wilson states, that Sir E. Coke, at Monson's arraignment, made some "rhetorical flourishes," to the effect that Overbury's death had something of retaliation in it, (which is confirmed by the reporter in the State Trials,) and he intimates that Sir Edmund had "deduced this from Northampton, assuring the Lieutenant that the making away of Sir T. Overbury, would be acceptable to the King." Wilson adds, that "it was rumoured that the King heightened to so much passion by this eruption of Sir E. Coke, went to the council table, and kneeling down there, desired God to lay a curse upon him and his posterity for ever, if he were consenting to Sir T. Overbury's death."

With regard to the dispositions of King James towards Sir T. Overbury, several contemporary letter writers at the Court represent that the King was much incensed against him. The Earl of Southampton writing to Sir R. Winwood, on the 4th of August, 1613, observes, "And much ado there hath been to keep Sir T. Overbury from a public censure of banishment and loss of office, such a *rooted hatred lyeth in the King's heart towards him.*" Sir H. Wootton, in a letter dated May 27th, 1613, writes, "Sir T. Overbury is still where he was, and as he was, without any alteration; the Viscount Rochester yet no way sinking in point of favor, which are two strange consis-

tents." Another courtier, in a letter, dated the 6th of May, 1613, writes, "Some say Lord Rochester took Sir T. Overbury's committing to heart. Others talk as if it were a great diminution of his favor and credit, which, the King doubting, would not have it so construed; but the next day told the council that he meant him daily more grace and favor, as should be seen in a short time, and that he took more delight and contentment in his company and conversation than in any man's living." Mr. Packer, in a letter to Sir R. Winwood, dated April 22nd, 1613, mentions that the King sent the Lord Chancellor and Lord Pembroke to offer an ambassage to Sir T. Overbury, which Sir Thomas immediately refused, and that "some said, he added some other speech which was very ill taken," and that thereupon the King sent for the Council, and after making an angry speech, gave order to them to send Sir T. Overbury to prison.

Roger Coke mentions that it "was commonly said, that Sir T. Overbury had vented some stinging sarcasms upon the court, which came to the King's hearing."

It is necessary for the examination of King James's singular behaviour with regard to the Earl of Somerset's trial, to advert to the terms of disgusting familiarity on which he lived with his favourites. In the first chapter of this work various particulars have been related concerning

his demeanour towards Somerset, and his contrivance for adjusting the delicate relation between his Queen and his "dear ones." The correspondence between James and Villiers, (whom Bishop Williams in the King's funeral sermon designates as the "disciple whom his master so much loved,") is one of the most extraordinary that ever passed between man and man. In one letter James tells Villiers, whom he always calls *Steiny*, (because St. Stephen is usually painted with a glory round his head,) that "he wears Steiny's picture under his waistcoat, near his heart." In another, he bids Steiny hasten to him that night, in order that "his white teeth may shine upon him." Another letter from the King to Villiers begins thus: "Blessing, blessing, blessing on thy heart's roots." Villiers always subscribes himself as James's *Dog*. The soubriquet of the *King* was the *Sow*.

It is remarkable, on reference to Ben Jonson's "Masque of Gypsies," and his poetical devices for the entertainment given to the King and Queen on May Day, called the "Penates," that James seems to have been pleased with its being pointedly noticed to him, in the presence of his Court, that he was indifferent and cold to the fascinations of the female sex.

The fortunes and influence of royal favourites constitute an important feature in the domestic history of England; but there does not appear to have been any favourite whose intercourse with his

Sovereign was very similar to that of Somerset or Villiers with King James, excepting Piers Gaveston, the minion of Edward II. Edward used to fall on Gaveston's neck, call him brother, give him his consort's jewels and trinkets, and took particular pleasure in finding him a wife, as James was moved by the like propensity in regard to Somerset. Gaveston and Somerset both used nicknames for all the principal nobility. Both fell by the machinations of injured Queens, though the one was put to death without a regular trial, whilst the other was formally tried and condemned, but not executed.

Whatever view be taken of the Earl of Somerset's case, it is impossible to regard James's conduct with regard to it, without feelings of indignation against him as a Sovereign and as a man. If James believed Somerset to be the instigator of the prisoners whose death-warrants he had signed, what is to be thought of the prison communications between the King and the murderer? what of the pardon, evidently resolved upon before the trial? How is such conduct deserving of the funeral eulogium passed on James by Bishop Williams*. "I could tell you that which will never be believed in later times, of a lord (Lord Sanquar) that died of a vile varlet, of a peer condemned for a sorry gentleman, for fear of severing the

* This Bishop was said to have been a diocese of himself, —Bishop, Dean, Canon, Prebendary, and Parson.

breadth of a hair from the line of justice." If James believed Somerset innocent, his conduct was even more nefarious. It is a remarkable circumstance, that throughout the correspondence between James and Bacon with regard to Somerset, that there is no inquiry concerning each other's opinions as to his guilt or innocence; the King and the Chancellor seem wholly occupied with the stage-effect of the trial and the pardon.

But a more difficult question remains, which does not admit of a satisfactory solution in the present day, viz., whether the proceedings in the case of the Earl of Somerset indicate that James has more misdeeds to answer for, greater he could scarcely have? As to which, it is futile to argue with Lingard that the King's sensitiveness about Somerset's demeanour and speeches at his trial arose from overweening affection, even if there did not exist positive evidence that his affections had been estranged from Somerset before that nobleman's arrest. Bacon's letters, and the Losely papers, independently of the strange proceedings in regard to Sir T. Monson, and the statements of Wilson and Weldon, make it manifest that King James was afraid of Somerset using some dangerous topic in his own defence. And Somerset's letter to the King after his conviction corroborates this supposition.

Did King James apprehend the detection of some transaction connected with the death of

Prince Henry? Did he dread some revelation concerning the secret vices of his palace? Many plausible arguments have been advanced in favour of these theories. We do not know enough to enable us to admit or reject them altogether. But it is difficult to conjecture, how it could be feared that Somerset would bring forward topics apparently so irrelevant to the charge against himself, so calculated to increase the detestation of the Peers if he were believed to be implicated in the crimes he divulged, so sure to lead to his own conviction, and by excluding all hopes of pardon, to his ignominious death.

Somerset's course would not appear so indiscreet and unavailing, if he could have raised any probable inferences that the King, and not himself, (or rather, the King, with or without himself,) was Overbury's murderer. This, it is conceived, he might have been able to do, with some degree of plausibility, at least, if he had strongly put it to the Peers, that the most probable cause, in point of time, assigned for Overbury's death was the poisoned clyster applied by Lobell; and that the next probable cause was the constant repetition, during a long space of time, of arsenic or other drugs, in small doses, scientifically administered. But that it was preposterous to attribute Overbury's death to a dose of arsenic occasioning sixty stools three months before that event; or to the other imputed causes, which,

according to one representation of them, were far too antiquated, and, according to another, were fired in such a *volley*, that Overbury, in his obstinacy against poisons, must be supposed to have out-Mithridates'd Mithridates.

What answer could have been given, if Somerset had demanded why Mayerne, the King's Chief Physician, was not produced as a witness? or why his prescriptions for Overbury were not forthcoming, which he was writing during the whole period of Overbury's imprisonment, and which Lobell had delivered into the hands of the Chief Justice? Or if Somerset had asked whether the discovery of the plot had not really been made through the medium of Lobell's apprentice? And, if he had urged the Peers to consider, why Lobell had not been put upon his trial, and was still at large?

It is manifest that Somerset was well acquainted, at the time of Overbury's imprisonment, with the circumstance of the attendance of the King's physicians. It is singular that these physicians should have attended Overbury. It is difficult to suppose that the King did not converse with Mayerne on the subject of Overbury's death; it is certain that for two years after that event he made no stir in the matter. The King had been, at least, a co-operating party in the persecution of Overbury: he personally enjoined the Privy Council to send him to the Tower, and

turned a deaf ear to the petitions of Overbury's father and mother for his release, after confinement for a much longer period than was at all commensurate with the alleged contempt of declining an Embassy.

Sir James Macintosh, in his *History of England*, appears to treat the common story of the poisoning of Overbury as improbable, but he is at a loss to account for the confessions of the accused persons. Perhaps the hope, or, it may be, a delusive promise of pardon, and, very likely, the application of the rack, may be thought to account for such confessions on the supposition that they were untrue. And from the remarks in a previous chapter of this work, it may be imagined, that a reader of ancient State Trials is in the condition of Bishop Berkeley's Idealist, in regard to having no security that anything he reads had ever a real existence; he may be certain, that much which he reads is misrepresentation or pure fiction.

Nevertheless, it will generally be believed, that the Countess of Somerset did employ Franklin and Weston to poison Overbury,—whether or not, they did, in fact, give him poisons, and, whether or not, these poisons killed him: and that Sir G. Helwysse, with a knowledge of her designs, did not take all the steps he ought to have done to counteract them.

It appears, also, that King James evinced considerable activity in the prosecution of the persons

accused of poisoning Overbury. It may even be doubted whether, but for his interference, they would ever have been tried at all. It will, therefore, be asked, how is the presumption that the Countess of Somerset and her agents were busily employed in poisoning Overbury reconcilable with the theory that the King was his murderer? And moreover, whether it is at all likely that James, if he were conscious of guilt in respect of Overbury's murder, should have been so very forward in pressing on an inquiry touching the circumstances under which he died?

In answer to these questions, it may be observed, that the theory of King James being Overbury's murderer, explains, perhaps, in the most satisfactory manner that has been suggested, his very extraordinary behaviour towards Somerset whilst in prison, and his fears and precautions with regard to Somerset's trial. For if the King had planned the murder of Overbury, or, like King John in conferring with Hubert, had darkly entreated his physicians to "throw their eyes upon him," it is highly probable that Somerset, from the terms of bosom intimacy in which he was living with James, would have been cognizant of the secret. It would obviously have conduced to Somerset's acquittal, if by divulging such a secret, and informing the Peers of particulars connected with it, he had afforded a very intelligible clue through the intricacies of

a case which has puzzled the nation down to the present day.

Again, supposing that King James had been desirous to put Overbury "out of the way," (as Charles II. expressed himself in regard to Sir Harry Vane :) and, supposing that he had availed himself, for that purpose, of Mayerne's skill in chemistry, which it is well known, was remarkable in his day*, and of that physician's experience in the secret state-poisonings of the French capital: And supposing that Mayerne's countryman, Lobell, had really exhibited those indications of a guilty conscience, which are so graphically described in one of the suppressed examinations. May not all this have occurred contemporaneously with, and independent of a blind and bungling design of a passionate and revengeful woman to accomplish Overbury's death?

If the contrition of the sick apothecary's apprentice, which is spoken of by several writers of

* Mayerne published an apology against the faculty of physic at Paris, who attacked him for his application to the practice of chemistry. Petitot owed the perfection of his colouring on enamel to some chemical secrets disclosed to him by Mayerne. He seems to have taken pains to prepare the public for Overbury's death, since Mr. Lorkin writes to Sir J. Pickering on the 29th of August, about a fortnight before that event, "Sir T. Overbury is likely to run a short course, being sick unto death. The Lieutenant of the Tower, together with the physicians who were with him, have subscribed their hands, *that they hold him a man past all recovery.*"

credit, had begun to excite curiosity and inquiry into the circumstances of Overbury's death, might not King James, supposing he had really "put Overbury out of the way" in the manner suggested, have seized with avidity on the godsend twin-plot of the Countess of Somerset, which he might luckily have discovered about the same time, or, more probably, which he had been long aware of, but of which, as of the Gunpowder Plot, he invented a sham discovery?

Knowing, as we do, "the rooted hatred in James's heart towards Overbury," and his pre-determination to pardon the Earl and Countess of Somerset, it must appear singular that he should have taken such an extraordinary interest in all the proceedings of the Great Oyer, penning even the interrogatories and instructions whereby the minutest details were directed. This conduct, however, will not be regarded as surprising, if, by the condemnation of all the parties to the Countess's plot, James was screening himself, and all the parties to his own.

It is true, that it would be impossible to conduct the investigation of the Countess's plot in a fair and unflinching spirit without throwing light upon the King's. But the investigation was not conducted fairly: and this circumstance contributes to raise a strong suspicion that there existed a plot in which the King was implicated. For the part of the case which is left in obscurity, and which

might obviously have been rendered clear, the evidence which was not called for, or was kept out of the view of the public, and which would have been relevant and important in regard to the accusations of the Great Oyer, is precisely such as would have manifested the King's guilt or innocence.

Mr. Hallam, who has investigated the subject of Overbury's murder with his usual industry and sagacity, concludes, that "it is evident he was master of a secret, which it would have highly prejudiced the King's honour to divulge." And he observes that it seems most likely that "James had listened too much to some criminal suggestion from him and Somerset: but, of what nature, I cannot pretend even to conjecture; and that, through the apprehension of this being disclosed, he had pusillanimously acquiesced in the scheme of Overbury's murder."

Mr. Hallam is also of opinion, that "the symptoms of Prince Henry's illness and the appearances on dissection are not such as *could* result from poison." Hume writes on this matter, "How could it be imagined that a young Prince, living in his own court, surrounded by his own friends and domestics, could be taken off by so subtle a poison, if such a one exist, as could elude the skill of the most experienced physicians?"

As far as regards the finding of a motive for the King destroying Somerset, in order to render

the theory that he did destroy him not grossly improbable, it is sufficient to refer to the letters of courtiers referred to in a former page of this work, and to the notorious circumstances of Overbury's imprisonment. A malicious motive was manifestly not wanting; the only obscurity is concerning the cause that may be conjectured to have kindled it.

With regard to the circumstances of Prince Henry's death, though it may be very doubtful, whether James's hatred for Overbury had any relation to them, Mr. Hallam's and Hume's conclusions seem to be drawn too positively. It does not appear that, upon the occasion of the dissection of Prince Henry's body, any search was made after poisons; no chemical tests, such as are now universally applied for discovering poisons, appear to have been adopted. In Mayerne's collection of cases for which he wrote prescriptions, everything that relates to Prince Henry's last illness is torn out of the book*.

And as regards the symptoms of the Prince's illness, Sir C. Cornwallis, the Prince's Chamberlain, writes, that he was seized with sudden illness almost immediately after dining with his father at Whitehall; he complained of a "shivering attended with great heat and headache, which from that time never left him:" and he was obliged "sud-

* The book, however, contains a prescription about the same period, *pro Regince nigro equo epileptico*.

denly to take leave, and go to St. James's to bed." He had eat with a "seeming good appetite," and had heard two sermons in the morning. The *same evening* he was "tormented with an excessive thirst which never afterwards abated."

King James used to say of Prince Henry, (as we are told by Roger Coke, the son of a friend and companion of the Prince,) "What, will he bury me alive?" He forbad mourning being worn at court for his son. He never visited him during his last sickness; but, as Sir C. Cornwallis writes, "His Majesty being unwilling and unable to stay so near the gates of sorrow, removed to Theobalds, to wait there the event."

Like the associate of the Roman Manlius, who grudged to scatter nuts among the boys at the marriage immortalized by Catullus, Overbury had threatened opposition to Somerset's marriage with Lady Essex. If Overbury's letters, written from the Tower, be closely examined, the (two versions given in this work, and a third published in Winwood's Memorials, of which the manuscript is in the British Museum, and is indorsed by Sir E. Coke,) it will probably be thought, that if we could see Overbury's letters written before he was sent to prison to Somerset, they would be pretty much in the style of the correspondence between James and Villiers. Going downwards in the scale of rank, something of the same kind of intimacy appears to have subsisted between Over-

bury and his servant, Davis*. Though it is not, perhaps, very probable, as Harris, Sir Walter Scott, and, apparently, Brodie and Vaughan conjecture, that Somerset should have thought of defending himself by revealing any secrets known only to this gang of intimate associates; yet it is not unlikely that Overbury's separation from them in a passionate mood, and owing to a soreness caused, in a great measure, by James himself, should have brought on his head a cruel treatment dictated by the King's fears and vengeance.

It may be asked, whether in a case, in which there is merely a doubtful presumption that King James murdered Overbury; in which, the supplying of a motive for the King's hatred of him is, at best, an uncertain conjecture; is it candid and charitable not to give the King credit for such a character for *humanity* as, from the tenor of his public life, he may appear to have deserved?

As to this point of character, it must be acknowledged that Hume writes, in summing up his remarks on King James's character, "Upon the whole, it may be pronounced of his character, that all his qualities were sullied with weakness, and *embellished by humanity*." And Archbishop Laud, writing subsequently to King James's death, in-

* See Sir J. Ledcot's letter to Overbury concerning Davis *supra*. There is a confidential letter extant from Overbury before his imprisonment to this Davis, upon family matters.

forms us that “his rest is, *without question*, in Abraham’s bosom.”

On the other hand, we have a letter written by King James to the States of Holland, in these terms :—“As to the burning of Vorstius for his blasphemy and atheism, I leave you to your Christian wisdom, but surely never heretic better deserved the flames.” Vorstius was a theological opponent of the King, against whom the King wrote a declaration best known by being dedicated to “Our Lord and Saviour Jesus Christ, by his most humble and most obliged servant, James.” Two Arians, Bartholomew Legate, burnt to death at Smithfield, and Edward Wightman, at Litchfield, the former of whom had evinced his obduracy by not being convinced of his errors after a personal conference with royalty, were consigned to the stake by the writ *de hæretico comburendo*, issued at the King’s express order.

Overbury is far from a solitary example of the misery inflicted by James on his subjects by the method of arbitrary imprisonment. It was significantly written by a wit of these times to his infant son,—

Sweet Benjamin, since thou art young,
And hast not yet the use of tongue :
Make it thy slave, while thou art free ;
Imprison it; or it will thee.

When Selden had published his *History of Tithes*, in which the *divine right* to tithes was

called in question, King James sent for him, and told him, (as Selden himself relates,) that his history was about to be refuted in a book which one of the royal chaplains, Montague, had ready for the press, and added, "if you, or any of your friends, presume to reply to what Dr. Montague has written, I shall immediately send you to prison."

Selden and Sir E. Coke, two of the most learned men of which this country can boast, were sent to prison by King James for impugning, in their places in Parliament, the King's assertion, that the privileges of Parliament were "derived from the gracious permission of himself and his ancestors," and that they were "rather a toleration than an inheritance."

The King sent Lord Arundel to Coke when in prison, to intimidate him, by intimating that it was resolved to indict him for high treason, but that the King, out of his *humanity*, would so far abate the closeness of his confinement, as to admit eight of the learned in the law to confer with him on the exigency of his case. To which *Captain Coke* replied, "I know myself to be accounted to have as much skill in the law as any man in England, and, therefore, need no such help, nor fear to be judged by the law in that whereof I am accused."

Selden, whose love for liberty is testified in all his books by the motto, *περι παντος την ελευθεριαν*,

“Freedom above everything*,” must have severely felt the cruelty of the illegal imprisonment inflicted on him by King James. During his confinement he was debarred from the use of his library and papers, of which he bitterly complains†. Selden, in adopting for a motto to one of his books a passage from the Roman poet, Prudentius,

Sordes arcta inter vincla recusat,

informs us that he meant to express, that although restrained on every side by the walls of a prison, yet his mind had been undefiled by any wish to purchase liberty by a compromise of the dignity of Parliament, and the just rights of the people of England.

A still graver charge of cruel imprisonment, is to be preferred against King James, in the case of Sir Walter Raleigh. The King confined him in the Tower for thirteen years; which made Prince Henry say, that “no Sovereign but his father

* A book in Lincoln’s Inn Library, bequeathed by Sir M. Hale, which had belonged to Selden, has on its fly-leaf the Greek motto.

† A privation of the same nature in the next reign, broke the heart of Sir Robert Cotton. Before he died, he requested Sir H. Spelman to signify to the Lords of the Council, that their so long detaining his books from him, without rendering any reason for the same, had been the cause of his mortal malady. (*Sloane MSS. Letter of Sir T. Pickeney.*) Selden preserved to the end of his life the *nineteen* sheets of paper marked with the initials of the Lieutenant of the Tower, and covered with his own lucubrations, which was all the paper allowed him during a subsequent imprisonment under Charles of three years, after being confined three months without books, pen, ink, or paper.

would have shut up such a noble bird in a cage." The putting of Raleigh to death, is so far from being, as Hume would represent, an action "embellished by humanity;" as that, there is no action in English history more revolting to the moral sentiments of mankind.

But to take a nearer view of the sufferings inflicted by King James on Raleigh on his *second* imprisonment, which, at least, cannot admit of justification*. Raleigh was then sixty-four years of age: he was suffering under an intermitting fever and ague, (the same that he was apprehensive might prevent him from saying what he desired at his execution,) he wrote, to his wife, in an intercepted letter, "My swollen side keeps me in perpetual pain and unrest; God comfort us!" The Governor of the Tower, a miscreant of the name of Wilson, never stirred from Raleigh's presence from the time he opened his lodgings in the morning, till, with his own hand, he locked him up at night. On one occasion, this fitting agent of James' cruelty, writes to Sir R. Naunton, Secretary of State, doubtless intending thereby to conciliate the King's favour:—"I have removed *this man* into a safer and higher lodging, which, though it seemeth nearer to heaven, yet there is no means to escape, but to hell." And to the King himself he writes:—"I hope by such means as I shall use, to work out

* See Jardine's Criminal Trials, in which the particulars of Raleigh's two imprisonments are detailed.

more than I have yet done; if not, I doubt no other means will be of service, but a rack or a halter." It heightens our indignation against the *inhuman* King James, to notice the irrefragable spirit of Raleigh, contending against the infirmities of age and disease, and the more disheartening treatment of his ruthless persecutors. This appears from the language of another letter to the King :—"Howbeit if I have put him to any discourse to his liking of his last voyage, or former actions, he will talk immediately with as great heartiness, courage, and signs of cheerfulness, as the soundest and strongest man alive."

We shall next inquire, whether the natural instinct of consanguinity, or the feelings implanted in generous natures, of sympathy for the griefs of womankind, had any place in James's lauded humanity? At the moment when Overbury was expiring, in another chamber of the Tower was a young and beautiful princess in a state of maniacal distraction, who was a short time afterwards laid in her premature grave. This was Arabella Stuart, a near relative of the King, but who became the victim of his groundless suspicions, on account of her marriage, which his jealous mind prompted him might, in some way or other, be prejudicial to his title to his throne. In a letter to the two Chief Justices, Arabella Stuart had implored to be brought before them by habeas corpus, "and if your lordships," she urged, "may

not or will not grant unto me, the ordinary relief of a distressed subject, then, I beseech you, become humble intercessors to His Majesty, that I may receive such benefit of justice, as both His Majesty by his oath has promised, and the laws of this realm afford to all others, those of his blood not excepted, and, though, unfortunate woman! I can obtain neither, yet, I implore your lordships retain me in your good opinion, and judge charitably till I be proved to have committed any offence, either against God, or His Majesty, deserving so long restraint, or separation from my lawful husband.” James’s blasphemous and unfeeling reply to all intercessions on behalf of Arabella Stuart, was, “She has tasted of the forbidden fruit, and must pay the penalty of her disobedience.”

The heartsickness of deferred hope, the prospect of interminable imprisonment and separation from her beloved husband, and the keen sense of her wrongs, overpowered the mind and reason of Arabella Stuart, perhaps shortened her existence. Of the latter circumstance it is impossible not to entertain suspicions; for the absence of inquiry demanded by law concerning the death of any state prisoner, and a midnight funeral, unaccompanied with ceremonies usual on the interment of any of royal blood, have afforded a ground of presumption, that the death of James’s kinswoman and victim was a counterpart of that of Sir Thomas Overbury.

Whether Arabella Stuart died of violence, or

from her health being impaired by the same causes which distracted her mind, Posterity must regard King James as her *murderer*, equally as much as if he had, with his own hands, held a poisoned chalice to her lips. Her cruel fate alone, without calling in aid the other examples of James's inhumanity that have been adduced, renders it not only not improbable, as far as any presumption from character is concerned, that he poisoned Overbury, but shows that such an infamous act would have been perfectly congenial to his inhuman disposition.

APPENDIX.

ON THE FLATTERY OF ENGLISH SOVEREIGNS.

THE questions of the guilt or innocence of King James or of the Earl of Somerset, are of small importance in comparison with the lessons of moral and political wisdom which may be learnt from the proceedings that have been the subject of the preceding chapters. But in order to render these transactions of past times useful to the present generation, it is necessary to treat of them in connection with the history of the judicature and constitution of the country, of the manners of private and public life, and of national morals.

It is the object of the present Appendix to collect a few historical illustrations of the practice of flattering sovereigns, of which some remarkable instances have been exhibited in the course of the trials in the Great Oyer of Poisoning. For one of the most signal failures of justice recorded in the annals of English judicature, and which is attributable solely to an abuse of a prerogative of the crown, is, that whilst Helwysse, Franklin, Weston, and Mrs. Turner should have been hanged, the Countess of Somerset, who instigated, hired, and paid them, should have been pardoned*. And yet it has been seen that Sir F. Bacon, with a full knowledge of all the king intended to do, seizes every opportunity of extolling James for the *Princely zeal for justice* which he represents him to have manifested: and several writers of that day indulge their fondness for alliteration and flattery, by singing the praises of *James the Just*†.

It is painful to reflect on the moral miasma of the court of King James, which could tarnish and degrade illustrious characters who were fitted by nature to be the lights and ornaments of mankind. We learn from hence that the noble spirits of a nation can never flourish in their natural grandeur, except they act from higher

* Sergeant Montague, who was not in the secret of the king's pre-determination to pardon Somerset, quoted to the peers the antithetical maxim, "Plus peccat auctor quam actor."

† Carte writes, "Nothing can show a more inflexible regard to justice than *all* the king's proceedings in the affair of Sir T. Overbury."

incentives than any sovereign can offer, and for more enlarged ends than are bounded by any sovereign's vanity or inclinations.

The habitual use of gross flattery, of which we have instances in the preceding pages, was a principal cause which blinded our sovereigns to the nature and consequences of the vicious or arbitrary courses they adopted, and which precipitated several of them from their thrones. The history of English literature, like that of ancient Rome, exhibits the melancholy lesson, that no conduct of a despotic sovereign can be so derogatory or wicked, as to preclude the incense of the enchanting and sublime, but venal and adulatory muses.

I. THE FIRST CLASS OF EXAMPLES OF FLATTERY TO SOVEREIGNS WHICH WILL BE ADVERTED TO, REGARDS INSTANCES IN WHICH THEY ARE COMPARED TO DIVINE PERSONS, OR THEIR ACTIONS ARE ASSIMILATED TO WHAT IS RELATED OF THE DEITY OR HOLY CHARACTERS IN THE SCRIPTURES.

The well-known reproof of Canute to his courtiers, who ascribed to him a power over the waves of the sea, is the first instance of flattery addressed to a royal personage in this country, that is recorded in our common histories; but the divine attributes of sovereignty in England, which, in theory, are represented to belong to it in the present day, are of greater antiquity, and may be traced through the dynasties of the barbarian conquerors of Europe to the court of Imperial Rome. The law of England attributes to the king *absolute perfection, immortality, and ubiquity*. The king of England is, in theory, incapable not only of doing wrong, but of thinking wrong; and in him there is no folly or weakness. When the *real* king dies, his politic body escapes from his natural body, and by a sort of legal metempsychosis, enters into the natural body of his successor. It is said by lawyers that the politic body of the sovereign includes in it the natural body, and the natural body has in it the politic body. "*Corpus incorporatum in corpore naturali, et corpus naturale in corpore corporato.*" Lord Chief Justice Dyer has thought it necessary for the proper understanding of the mystical nature of the sovereign of England, to explain, that to engender issue is the office of the king's natural and not of his politic body*.

* See this subject investigated with the learning and sagacity which

Archbishop Chiechely tells a parliament in the reign of Henry VI., that all perfections were comprised within the number *six*: and as God made all things in *six* days, so all that was begun in the reigns of the *five* first Henries would be accomplished in that of Henry the *Sixth*.

As soon as the Hampton Court conference was over, which King James concluded by saying to the dissenters, "A Scotch Presbytery agrees as well with monarchy, as God and the devil; and if this be all your party has to say, I will make you conform yourselves, or else harry you out of the land, or do worse," Bancroft, bishop of London, fell upon his knees before the king, and exclaimed, "I protest my heart melteth for joy, that Almighty God, of his singular mercy, hath given us such a king, as since Christ's time hath not been." And Whitgift, archbishop of Canterbury, affirmed that "undoubtedly his Majesty spake by the special assistance of God's spirit."

Bellenden's literary work is best known in the present day, by the classical preface of Dr. Parr, with the doctor's Latin dedications to Lord North, Burke and Fox, and his imputations on Dr. Middleton for plagiarism. Bellenden introduces a singular device of three *hearts* joined together, which are appropriated by letters to Princes Henry and Charles, and the Princess Elizabeth. In the middle is the king's initial I., underneath the following explanatory lines are appended:—

"Forma trium insignit Numen: Cor signat amorem:

Tres quia personæ Numinis, unus amor.

Numine vester amor patriumque Cor in tribus unum

Crescit, adunantur Regia corda trium.

Hinc Deus impertit vobis sua symbola; vestris

Vultque sit in titulis, In tribus unus Amor."

A Welsh bishop, in a preface to a Welsh version of the Bible, makes an apology to King James, for preferring the Deity to his Majesty.

Bishop Williams, in an address to a parliament summoned by King James, observes: "Many times it falls out with the assent of kings as it does with God. God many times doth not grant the petitions we ask: now God and the king resemble a physician and the king; they

could not fail to distinguish any work of the late lamented Mr. John Allen, in a treatise on "the Rise and Growth of the Royal Prerogative in England."

will not give that which their patients or subjects desire, because they know how to fit them with better things than they do desire." In a speech on the conclusion of a parliament, in which some abortive attempts had been made to enact vexatious impositions, the same bishop told the houses of peers and commons, that "God and the king were averse to *nullities*. The first *parliament* consisted of three persons consulting together '*faciamus hominem*:' (Let us make man)."

Chancellor Finch told one of the parliaments of Charles I., "His Majesty's kingly resolutions are seated in the *ark* of his sacred breast; and it were a presumption of too high a nature for any Uzziah, uncalled, to touch it." And then, comparing his Majesty to a heathen god, he adds: "The king is now pleased to lay by the shining beams of his Majesty, as Phœbus did to Phaëton, that the distance between sovereignty and subjection should not bar you of filial freedom of access to his person and counsels. But, let us beware, how, with the son of Clymene, we aim not at the guiding of the chariot. Let us ever remember, that though the king sometimes lays by the beams and rays of majesty, he never lays by majesty itself."

Rich, a Speaker of the Commons, compared Henry VIII., "for justice and prudence, to Solomon; for strength and fortitude, to Samson; and for beauty and comeliness, to Absalom." On the opening of Henry VIII.'s parliament of the year 1542, Chancellor Audley makes a comparison between Henry and King David. among other points of similitude, he desired the peers and commons to reflect how the king "had vanquished the Roman Goliath, with a sling and a stone. The staff of the sling was the king; the stone was the word of God; and the sling was made of thread twisted by preachers."

The same chancellor told a parliament, that Henry VIII., upon his accession, had made the like prayer with David in the Psalms, "Give me understanding, that I may search thy law." Wherefore, says the chancellor, "the Almighty did anoint him with the oil of sapience above the rest of the kings of the earth, and above all his progenitors." At hearing this announcement all the peers and commons rose up, and bowed to the vacant throne.

In King James's funeral sermon preached by Bishop Williams there is an elaborate comparison between the deceased king and Solomon. The following occur among the points in which James

resembled Solomon. "Solomon was a writer in verse and prose ; so, in a very pure and exquisite fashion, was our sweet sovereign King James. Solomon was the greatest patron we ever read of to church and churchmen ; and yet no greater, *let the House of Aaron now confess*, than King James. Solomon was of a complexion white and ruddy, so was King James."

Waller, whom Lord Clarendon speaks of as a "tenth muse," and before whom, according to Dryden, English poetry, was in its "nonage," celebrates the escape of Prince Charles on his return from Spain, when overtaken by a storm in the bay of St. Andrew. One of the compliments paid to the prince by the poet is as follows :—

"Godlike his courage seemed, whom nor delight
Could soften, nor the face of death affright :
Next to the power of making tempests cease,
Was in that storm to have so calm a peace."

Waller writes on the occasion of King Charles proceeding with his prayers, after he had received intelligence that the Duke of Buckingham was assassinated,—

"So earnest with thy God ? Can no new care,
No sense of danger, interrupt thy prayer ?
The sacred wrestler, till a blessing given,
Quits not his hold, but halting conquers heaven."

The same poet and orator levied contributions on scripture for the praise of Cromwell. Indeed Waller ingeniously excused himself to Charles II. for writing better verses on a protector than on kings, upon the ground that poets succeed best in *fiction*.

"Your drooping country, torn with civil hate,
Restored by you, is made a glorious state ;
Whilst all the neighbour princes unto you,
Like Joseph's sheaves, pay reverence and bow :
And then your Highness, not for ours alone,
But for the World's Protector, shall be known."

Evelyn has graphically described the scene of dissipation in the "glorious gallery" of Charles II. with his mistresses on the Sunday evening before his death ; and he adds, "six days after, all was dust." It is notorious, that this king was the pensioner of a foreign sovereign, whose interests he was bribed by gold to promote, to the prejudice of the welfare and honour of the nation, the government of which Providence had assigned to him as the most sacred of

trusts. Nevertheless, we learn from a letter of a chaplain of the Bishop of Ely, that, when Charles was on his death-bed, "The bishops moved him, as he was the Lord's anointed, and the father of his country, to bless them *also*," (that is to say, also after blessing his concubines and bastards,) "and, in them, the whole body of his subjects. Whereupon, the room being full, all fell down upon their knees, and he raised himself in his bed, and *very solemnly blessed* them all. The solemnity of which was so very surprising, as was extremely moving, and caused a general lamentation throughout; no one witnessing it, without being much affected with it, being *new and great*." Shortly after this blessing imparted to the Protestant Bishops, the Roman Catholic Priest, Hudlestone, was admitted by the back stairs, and gave the king extreme unction.

The following extracts are taken from Dryden's "Threnodia Augustalis," or "Funeral Pindaric Poem, sacred to the happy memory of King Charles II."

"What mists of Providence are these,
Through which we cannot see !
So saints, by supernatural power set free,
Are left at last in martyrdom to die ;
Such is the end of oft-repeated miracles.
Forgive me, Heaven, that impious thought !
'Twas grief for Charles, to madness wrought,
That questioned thy supreme decree.
*Thou didst his gracious reign prolong,
Even in thy saints' and angels' wrong.*

Calm was his life, and quiet was his death,
Soft as those gentle whispers were
In which the Almighty did appear ;
By the still voice the prophet knew him there.

That all-forgiving king,
The type of Him above ;
That inexhausted spring
Of clemency and love.

A prince (James II.) on whom, if Heaven its eyes could close,
The welfare of the world it safely might repose."

The following extracts are from Dryden's "Britannia Rediviva," a poem on the birth of the Pretender. It will probably be thought that this poem was calculated to augment, rather than dispel the

political delusion under which the nation willingly acquiesced, of the warming-pan story, and other fraudulent representations of King William and his creature, Burnet.*

“Hail, son of prayers ! by holy violence,
 Drawn down from heaven ; but long be banished thence,
 And late to thy paternal skies retire—
 To mend our crimes, whole ages would require ;
 To change the inveterate habit of our sins,
 And finish what thy godlike sire begins.
 Kind heaven, to make us Englishmen again,
 No less can give us than a patriarch’s reign.
 The sacred cradle to your charge receive,
 Ye seraphs, and by turn the guard relieve.

Born in broad daylight, that th’ ungrateful rout
 May find no room for a remaining doubt.
 Truth, which itself is light, does darkness shun,
 And the true eaglet safely dares the sun.
 Fain would the fiends have made a dubious birth,
 Loth to confess the Godhead clothed in earth ;
 But sicken’d, after all their baffled lies,
 To find an heir-apparent in the skies,
 Abandon’d to despair, still may they grudge,
 And, owning not the Saviour, find the Judge !

Great Michael ! Prince of all the ethereal hosts,
 And whate’er inborn saints our Britain boasts ;
 And thou, th’ adopted patron of our isle,
 With cheerful accents on this infant smile !
 The pledge of heaven, which, dropping from above,
 Secures our bliss, and reconciles his love.

Let his baptismal drops for us atone ;
 Lustrations for offences not his own :
 Let conscience, which is interest ill disguised,
 In the same font be cleansed, and all the land baptized !

Unnamed as yet, at least unknown to fame ;
 Is there a strife in heaven about his name † ?
 Where every famous predecessor vies,
 And makes a faction for it in the skies ?

* See the Author’s Lectures on Classical Education, for Medallie Incriptions regarding the birth of the Pretender.

† The prince was christened, but not named.

Or must it be reserved to thought alone ?
 Such was the sacred Tetragrammaton*;
 As Jove's increase, who from his brain was born,
 Whom arms and arts did equally adorn,
 Free of the breast was bred, whose milky taste
 Minerva's name to Venus had debased ;
 So this imperial babe rejects the food
 That mixes monarch's with plebeian blood †.

Last solemn sabbath‡ saw the church attend,
 The Paraclete in fiery pomp descend :
 But when his wondrous Octave§ roll'd again,
 He brought a royal infant in his train.
 So great a blessing to so good a king,
 None but the eternal Comforter could bring.
 Or did the mighty Trinity conspire,
 As once in council to create our sire ?
 It seems as if they sent the new-born guest
 To wait on the procession of their feast ;
 And, on their sacred anniverse decreed
 To stamp their image on the promised seed.
 Three realms united, and on one bestowed,
 An emblem of their mystic union showed :
 The mighty trine the triple empire shared,
 And every Person would have one to guard.

Let angels' voices with their harps conspire,
 But keep the auspicious infant from the choir ;
 Late let him sing above, and let us know
 No *sweeter music* than his *cries* below."

Several poets write of a *star* which is supposed to have appeared for the first time on the morning of the birth of Charles II. ; but which would seem to have been none other than the planet Venus ; a *conjunction*, indeed, calculated to make converts to astrology, even among those who disbelieve in a star having been sent on a special mission. Waller thus alludes to it :—

" His thoughts rise higher, when he does reflect
 On what the world may from that *star* expect ;
 Which at his birth appear'd, to let us see
 Day for his sake could with the night agree."

* Jehovah, or the name of God ; unlawful to be pronounced by the Jew.

† The prince had no wet nurse.

‡ Whit-Sunday.

§ Trinity-Sunday, the Octave of Whit-Sunday.

And Dryden, in his "Astrea Redux :"—

"That star that at your birth shone out so bright,
It stained the duller sun's meridian light :
Did once again its potent fires renew,
Guiding our eyes to find and worship you."

Dryden seems to allude to this star in the "Duke of Guise," where, speaking literally of Henry III., but covertly of Charles II., he makes Melanax say,—

"——— He cannot be deposed,
For at his birth there shone a regal star."

Dryden's "Albion and Albanus" is a poetical eulogy on Charles II. and James II. under those appellations, accompanied with allegorical attacks on their principal political opponents. Among personalities contained in this piece, Shaftesbury, who wore an issue in his side, in consequence of an accident he received from the overturning of a carriage, is represented as a fiend with wings, and snakes twisted round his body; he is encompassed by several fantastical heads who suck poison from him, which runs out of a tap in his side. The ancient gods Apollo, Neptune and Venus, dispute where Charles II. is to be placed in heaven upon his apotheosis that is announced to have occurred; this is settled to be between the constellations of Libra and Virgo; though the poet ought to have considered such a place as rather a hell than a heaven for Charles II., if he was destined to be a fixed star.

"Now Albion is come,
The people of the sky
Run gazing, and cry,—Make room,
Make room, make room,
Make room for our new Deity."

The epilogue on this piece is reserved for an eulogium on the "*plain dealing*" of James II., which was the attribute for which that king desired to be distinguished, whilst he repudiated those temporising concessions adopted by his brother, who once declared to him "that he had no desire to go abroad again." The epilogue contains the following lines:—

"Plain-dealing for a jewel has been known,
But ne'er till now the jewel of the Crown.
And when a king is to a God refined,
On all he says and does he stamps his mind."

His subjects know him now, and trust him more,
 Than all their kings, and all their laws before.
 What safety could their public acts afford?
 These he can break, but cannot break his word.
 The saint who walked on waves securely trod
 While he believed the beck'ning of his God.
 But when his faith no longer bore him out,
 Began to sink, as he began to doubt.
 Thus Britain's basis on a word is laid,
 As by a word the world itself is made."

A royal proclamation dated January 9, 1683, commences thus:—
 "Whereas, by the Grace of God, the Kings and Queens of this realm, by many ages past, have had the happiness, by their sacred touch, and invocation of the name of God, to cure those who are afflicted with the disease called the *King's Evil*. And his Majesty, in no less measure than any of his royal predecessors, having had good success therein, and, in his disposition, being as ready and willing," &c.

There is a tradition which has been traced up to the actor Betterton, that Shakspeare received a present of money from King James for complimenting him on curing the *King's Evil*. The passage in Shakspeare is as follows:—

"*Malcolm*. Comes the king forth, I pray you?

Doctor. Aye, sir: there are a crew of wretched souls,
 That stay his cure: their malady convinces
 The great assay of art; but, at his touch,
 Such sanctity hath heaven given his hand,
 They presently amend.

Macduff. What's the disease he means?

Malcolm. 'Tis called the Evil,
 A most miraculous work in this good king:
 Which often, since my here-remain in England,
 I have seen him do. How he solicits heaven
 Himself best knows; but strangely-visited people,
 All swoln and ulcerous, pitiful to the eye,
 The mere despair of surgery, he cures,
 Hanging a golden stamp about their necks,
 Put on with holy prayers: and, 'tis spoken,
 To the succeeding royalty he leaves
 The healing benediction. With this strange virtue
 He hath a heavenly gift of prophecy,
 And sundry blessings hang about his throne,
 That speak him full of grace."

Mrs. Behn thus addressed the queen upon the death of Charles II:—

“Methinks I see you like the Queen of Heaven,
To whom all patience and all grace was given;
Where the great Lord of life himself was laid
Upon her lap, all wounded, pale, and dead.
Transpierced with anguish, even to death transformed,
So she bewailed her God, so sighed, so mourned.
So his blest image on her heart remained,
So his blest memory o’er her soul still reigned.”

The epitaph on the monument of Edward the Confessor relates, as a matter of fact, the particular day of the month on which he ascended into heaven :

“Omnibus insignis virtutum laudibus heros,
Sextus Edvardus, Confessor, Rex venerandus,
Quinto die Junii moriens super æthera scandit.”

which may be Englished thus :—

“Our sacred Edward, famed for pious prayers,
The surname of Confessor justly bears;
Him all men praise in one harmonious tune:
He climb’d to heav’n on the ninth of June*.”

In an epitaph on Queen Elizabeth, she is described thus :—

“She was, and is, what can there more be said ?
On earth the Chief, in heaven the second Maid.”

In the year 1649 was published “A miracle of miracles wrought by the blood of King Charles of happy memory, upon a maid at Detford, who, by the violence of the disease called the king evil, was blind one whole year, but by making use of a piece of *handkerchief dipped in the king’s blood*, is recovered of her sight, to the comfort of the king’s friends, and astonishment of his enemies, the truth whereof many thousands can testify.” The author says, “the like was never known since our Saviour Christ and his blessed apostles lived on the earth. She was the most loathsome spectacle, besides being blind; had been given up by her physicians, forsaken by her acquaintance: yet she recovered her sight, and became lusty and strong as before, and capable of doing everything befitting her age, which was between fourteen and fifteen.” The names of her

* See the Author’s Lectures on Classical Education, for other Latin epitaphs on English kings.

parents and her abode are given, and persons are invited to satisfy themselves. It is stated that "hundreds do flock daily to see her, and that all who saw her before, do confess that it is a work the Lord hath done, whereby his name may be glorified, and the king's death thought upon." Hume, in describing the violent return of affection and duty which he represents to have been occasioned by King Charles's beheading, mentions a variety of facts which he has culled from authorities that he did not venture to name, nor to follow through all their extravagancies. His pencil marks are still extant in the books belonging to the Advocates' Library at Edinburgh which he consulted on this subject.

Lord Digby writes thus to Ormonde: "From the creation to the accursed day of this damnable murder, nothing parallel to this was ever heard of. Even crucifying our blessed Saviour, if we consider him only in his human nature, did nothing equal this, his kingdom not being of this world, and he, though unjustly condemned, yet judged at a lawful tribunal."

In a sermon preached before Charles II. at Breda, February 4, 1648-9, the Divine says, "The person now murdered was not the Lord of Glory, but a glorious lord, Christ's own vicar, his lieutenant, and vice-regent here on earth; and therefore, by all laws, divine and human, he was privileged from any punishment which could be inflicted by men. Albeit, he was inferior to Christ, as man is to God; yet was his privilege of inviolability far more clear than was Christ's. The proceedings against our sovereign were more illegal, and in many things more cruel."

South, preaching before Charles II., says, "The absolute subjection men yield to princes, comes from a secret working of the divine power, investing sovereign princes with certain marks and rays of that divine image, which overawes and controls the spirits of men, they know not how or why. But yet they feel themselves actually wrought upon and kept under by them, and that very frequently against their will. And this is that property in kings which we call Majesty." South designates Charles I. as a "blessed saint;" and he adds, "to finish this poor description of him, he was a father to his country, if but for this only, that he was the father of such a son!"

II. THE SECOND CLASS OF EXAMPLES OF FLATTERY TO SOVEREIGNS HERE COLLECTED RELATES TO INSTANCES IN WHICH THEY HAVE BEEN ENCOURAGED IN VICIOUS, INDISCREET, OR ARBITRARY COURSES.

One of the mischiefs arising from the praises lavished on King James as the English Solomon, was a propensity in which he indulged for interfering with the administration of justice. Of this evil the Great Oyer of Poisoning affords a memorable example. James sat personally in the Star Chamber, and was desirous of personally presiding in the Court of King's Bench*. It will be seen by the following passage, that Lord Bacon, in flattering the king, gives great encouragement to his mischievous ambition for rivalling the judicial fame of Solomon. Lord Bacon writes, "Length and ornament of speech are to be used for persuasion of multitudes, and not for information of kings; especially such a king as is the only instance that ever I knew to make a man of Plato's opinion, 'that all knowledge is but remembrance, and that the mind of man knoweth all things, and demandeth only to have her own notions excited and awaked:' which your majesty's rare and indeed singular gift and faculty of swift apprehension, and infinite expansion or multiplication of another man's knowledge by your own, as I have often observed, so I did extremely admire in Goodwin's cause, being a matter full of secrets and mysteries of our laws, merely new unto you, and quite out of the path of your education, reading, and conference: wherein, nevertheless, upon a spark of light given, your majesty took in so dexterously and profoundly, as if you had been indeed *anima legis*, not only in execution, but in understanding."

On the meeting of Henry VIII.'s parliament in the year 1537, which was made the instrument of disinheriting Elizabeth, Lord Chancellor Audley thus addresses the two houses:—"What man of middle condition would not this deter from marrying a second time? When he remembers that the first marriage was a vast expense and a great trouble of mind to him; and the second ran him into great and imminent dangers, which hung over him during

* See the Author's note in his edition of Fortescue "de laudibus legum Angliæ," on the passage "Proprio ore Rex nullus Angliæ judicium proferre usus est," in which the interference of the English sovereigns with the administration of justice at different periods is treated of.

the whole time of it. Yet this our most excellent prince, on the humble petition of the nobility, and *not out of any carnal lust or affection*, again *condescends* to contract matrimony; and hath at this time taken to himself another wife, whose age and fine form denotes her most fit and likely to bring forth children." It is to be kept in mind that Jane Seymour, Henry VIII.'s third wife, was courted by the husband of her mistress, and that Henry married her before four and twenty hours had elapsed since the axe had been reddened with the blood of Anne Boleyn.

In the parliament held in the year 1529, which was employed to sanction the persecution and spoliation of Wolsey, Sir T. More, who was indebted to the cardinal for his promotion in life, told the houses that he might in various points of view compare King Henry to a *good shepherd*. He observes, "As you see among a great flock of sheep some be rotten and faulty, which the good shepherd sendeth from the sound sheep: so the *great Wether*, which is of late fallen, juggled with the king so craftily, subtly, and untruly, that all men must think he imagined himself that the king had no sense to perceive his crafty dealings. But he was deceived; for his Grace's sight was so quick and penetrable, that he not only saw him, but saw through him."

Sir T. More writes to Cardinal Wolsey,—“The king's highness this night going to his supper, called me to him secretly, and commanded me to write unto your grace, that whereas it hath pleased our Lord to call to his mercy Mr. Mostyn, late alderman of London, his grace very greatly desireth for the special favour which he beareth to Sir W. Tyler, that the same Sir W. should have the widow of the said late alderman in marriage. For the furtherance whereof his highness, considering your grace's well-approved wisdom and dexterity in achieving and bringing to good hope his *virtuous and honourable appetites*,” &c.

The Convocation, consisting of the archbishops, bishops, and deputies of the clergy, who reported in favour of the nullity of Henry VIII.'s marriage with Anne of Cleves, on the ground that Henry did not give to it “*internum, purum, et integrum consensum*,” affirm that this cause for the king repudiating his wife was “*verum, justum, honestum, et sanctum*.”

Cromwell, Henry VIII.'s vicar-general, writes to the king's ambassador in Germany, the following account of Henry's cruel and disgraceful public disputation with Lambert, previous to sentencing him to the stake :

“The king’s majesty, for the reverence of the holy sacrament of the altar, did sit openly in his hall, and there presided at the disputation, process, and judgment of a miserable heretic sacramentary, who was burned the 20th of November. It was a wonder to see how princely, with how excellent gravity and inestimable majesty his highness exercised there the very office of supreme head of the Church of England. How benignly his grace essayed to convert the miserable man: how strong and manifest reasons his highness alleged against him. I wish the princes and potentates of Christendom to have had a meet place to have seen it. Undoubtedly they should have much marvelled at his majesty’s most high wisdom and judgment, and reputed him no otherwise after the same, than in a manner the mirror and light of all other kings and princes in Christendom.”

Heneage Finch, at the opening of the parliament which passed the Petition of Right, quoted a passage from Homer to show, that “kings were not to be laid in common balance with other men; for kings knew no other tenure than God’s service, and their value is only to be tried at his beam.” He adds—“*‘Eritis sicut Dei’* was the serpent’s counsel, and ruined mankind; nor is it fit for private men to search into the counsels or actions of kings.” He compared the nation to a *multiplying glass*; and said that members of parliament had need wipe the glass, and wipe their eyes, and then they would behold a king of *unparalleled moderation*.

The same speaker, among other extravagant praises of King Charles, says, “What age shall not record and eternise your princely magnanimity in that heroic action or venturous journey into Spain, or *hazarding your person to preserve the kingdom*. Fathers will tell it to their children in succession; after ages will then think it a fable.”

The disgraceful return of Prince Charles and Villiers from Spain, is celebrated by Ben Jonson in a masque, called “*Neptune’s Triumph*.” The scene opens with two pillars, bearing inscriptions “*Nep. Red. and Sec. Jov.*” Neptune sends a floating island to bring back Prince Albion and Hippias, his master of the horse. The masquers appear on the island, which approaches the shore; they land, and enter the palace of Oceanus. A fleet of ships is seen at a distance; whereupon an antemasque of sailors enters, shouting, “Come away, boys, the town is ours: hey for Neptune and our young master!” To which the singers respond:

“ He knows the compass, and the card :
 And Castor sits on the main yard :
 And Pollux too to help your hales,
 And bright Leucothoë fills your sails :
 Arion sings, and Dolphins swim
 All the long way, to gaze on *him*.”

Another antemasque, denoting the hospitality which graced the Prince's return, consisted of dancers in the costume of articles of cookery. Two dwarfs enter as partridges.

After Charles had dismissed his third Parliament, and was levying impositions by arbitrary courses, Ben Jonson thus addresses him in a Birth-day Ode,—

“ Indeed, when had Great Britain greater cause
 Than now to love the sovereign and the laws;
 When you that reign, are her example grown,
 And what are bounds to her you make your own.”

Dryden thus eulogizes James II.'s exercise of the dispensing power, and his “ Declaration of Indulgence,” which led to the imprisonment of the Seven Bishops, and was one of the proximate causes of the king's compulsory abdication. It occurs in the “ Hind and Panther.”

“ Then, all maturely weigh'd, pronounced a doom
 Of sacred strength for every age to come.
 By this the doves their wealth and state possess,
 No rights infringe, but licence to oppress.

He therefore makes all birds of every sect
 Free of his favour, with promise to respect
 Their several kinds alike, and equally protect.
 His gracious edict the same franchise yields
 To all the wild increase of woods and fields,
 And who in rocks aloof, and who in steeples builds.
 To crows the like impartial grace affords,
 And choughs and daws, and such republic birds;
 Secured with ample privilege to feed,
 Each has his district, and his bounds decreed;
 Combined in common interest with his own,
 But not to pass the pigeon's Rubicon.

The passive church, that with pretended grace
 Did her instinctive mark in duty place,
 Now touch'd, reviles her maker to his face.”

Charles the Second's sudden dissolution of the Oxford Parliament drove to despair all persons attached to public liberty, and it was the cause of the flowing of the blood of two of the most illustrious patriots of which any nation, ancient or modern, can boast, Algernon Sidney and Lord Russell. Nevertheless, Dryden, in his "Absalom and Achitophel," has perverted the vigour and brilliancy of his poetical genius to immortalize King Charles's speech on this occasion, which, like the battle of Chæroneia, was "fatal to liberty."

"With all these loads of injuries oppress,
And long revolving in his careful breast
The event of things, at last his patience tired,
Thus, from his royal throne, by heaven inspired,
The God-like David spoke; with awful fear
His train their Maker in their master hear.

Thus long have I, by native mercy sway'd,
My wrongs dissembled, my revenge delay'd;
So willing to forgive the offending age;
So much the father did the king assuage.
But now so far my clemency they slight,
The offenders question my forgiving right.
That one was made for many they contend;
But 'tis to rule; for that's a monarch's end.
They call my tenderness of blood, my fear;
Though manly tempers can the longest bear.
Yet since they will divert my native course,
'Tis time to show I am not good by force.
Those heap'd affronts, that haughty subjects bring,
Are burdens for a camel, not a king.
Kings are the public pillars of the state,
Born to sustain and prop the nation's weight:
If my young Samson will pretend a call
To shake the column, let him share the fall.
But oh, that yet he would repent and live!
How easy 'tis for parents to forgive!
With how few tears a pardon might be won
From nature pleading for a darling son!
Poor, pitied youth, by my paternal care
Raised up to all the height his frame could bear!
Had God ordain'd his fate for empire born,
He would have given his soul another turn:
Gull'd, with a patriot's name, whose modern sense
Is one that would by law supplant his prince;
The people's brave, the politician's tool;
Never was patriot yet, but was a fool.

Whence comes it, that religion and the laws
 Should more be Absalom's than David's cause?
 His old instructor, ere he lost his place,
 Was never thought endued with so much grace.
 Good heavens, how faction can a patriot paint!
 My rebel ever proves my people's saint.
 Would they impose an heir upon the throne?
 Let Sanhedrims be taught to give their own.
 A king's at least a part of government;
 And mine as requisite as their consent.
 Without my leave a future king to chuse,
 Infers a right the present to depose.
 True, they petition me t'approve their choice;
 But Esau's hands suit ill with Jacob's voice.
 My pious subjects for my safety pray;
 Which to secure, they take my power away.
 From plots and treasons heaven preserve my years,
 But save me most from my petitioners!
 Unsatiated as the barren womb or grave;
 God cannot grant so much as they can crave.
 What then is left, but with a jealous eye
 To guard the small remains of royalty?
 The law shall still direct my peaceful sway,
 And the same law teach rebels to obey:
 Votes shall no more establish'd power control,—
 Such votes, as make a part exceed the whole.
 No groundless clamours shall my friends remove,
 Nor crowds have power to punish ere they prove;
 For gods and god-like kings their care express,
 Still to defend their servants in distress.
 Oh, that my power to saving were confined!
 Why am I forced, like heaven, against my mind,
 To make examples of another kind!
 Must I at length the sword of justice draw?
 Oh curst effects of necessary law!
 How ill my fear they by my mercy scan!
 Beware the fury of a patient man.
 Law they require, let law then show her face;
 They could not be content to look on grace,
 Her hinder parts, but with a daring eye,
 To tempt the terror of her front, and die.
 By their own arts 'tis righteously decreed,
 Those dire artificers of death shall bleed.
 Against themselves their witnesses shall swear,
 Till, viper-like, their mother-plot they tear;
 And suck for nutriment that bloody gore,
 Which was their principle of life before.

Their Belial with their Beelzebub will fight;
Thus on my foes, my foes shall do me right.
Nor doubt the event; for factious crowds engage,
In their first onset, all their brutal rage.
Then let them take an unresisted course;
Retire, and traverse, and delude their force.
But when they stand all breathless, urge the fight,
And rise upon them with redoubled might.
For lawful power is still superior found,
When, long driven back, at length it stands the ground.
He said; the Almighty, nodding, gave consent,
And peals of thunder shook the firmament.
Henceforth a series of new time began,
The mighty years in long procession ran:
Once more the godlike David was restored,
And willing nations knew their lawful lord."

Charles's arbitrary measure of abruptly dissolving the Oxford Parliament, is further eulogized in Dryden's epistle dedicatory to King Charles of the "History of the League," translated by his Majesty's command for the purpose of calumniating the Whig party through the medium of French history: "Henry IV., your royal grandfather, whose victories and subversion of the League are the main argument of this history, was a prince most clement in his nature. He forgave his rebels, and received them all into mercy, and some of them into favour, but it was not till he had fully vanquished them. They were sensible of their impiety; they submitted; and his clemency was not extorted from him; it was his free gift, and it was seasonably given. The case was here the same. I confess it was not much unlike it at your Majesty's happy restoration; yet so much of the parallel was then wanting, that the amnesty you gave produced not all the desired effects. For our sects are of a more obstinate nature than were those leaguering catholics, who were always for a king; and, yet more, the major part of them would have heir of the royal stem. But our associates and sectaries are men of commonwealth principles; and, though their first stroke was only aimed at the immediate succession, it was most manifest that it would not then have ended, for at the same time they were hewing at your royal prerogatives. So that the next successor, if there had been any, must have been a precarious prince, and depended on them for the necessaries of life. But of these and more outrageous proceedings, your Majesty has

already shown yourself justly sensible in your declaration, after the dissolution of the last parliament, which put an end to the arbitrary encroachments of a popular faction. Since which time, it has pleased Almighty God so to prosper your affairs, that, without searching into the secrets of Divine Providence, it is evident your magnanimity and resolution, next under Him, have been the immediate cause of your safety and our present happiness. By weathering of which storm, may I presume to say it without flattery, you have performed a greater and more glorious work than all the conquests of your neighbours. For it is not difficult for a great monarchy well united, and making use of advantages, to extend its limits. But to be pressed with wants, surrounded with dangers, *your authority undermined in popular assemblies*, your sacred life attempted by a conspiracy, your royal brother forced from your arms; in one word, to govern a kingdom which was either possessed or turned into a bedlam; and yet, in the midst of ruin, to stand firm, undaunted, and resolved; and, at last, to break through all these difficulties and dispel them. This is, indeed, an action which is worthy the grandson of Henry the Great."

In Sir James Macintosh's very interesting diary kept by him during his voyage from India, among the remarks on Spenser's "Faerie Queene," which appears to have afforded him peculiar delight, he notices, "The execution of a beautiful woman by Sir Artegal, was certainly intended to reconcile the mind to the execution at Fotheringay." On referring to Spenser's poem it will be seen that the poet takes great pains to extol the *merciful* disposition of Queen Elizabeth towards the unfortunate Mary; and thus to flatter the Queen upon an action which is the deepest stain upon her memory.

"Then there was brought, as prisoner to the barre,

A ladie of great countenance and place,

But that she it with foul abuse did marre;

Yet did appear rare beauty in her face,

But blotted with condition vile and base,

That all her other honour did obscure

And titles of nobility deface:

Yet, in that wretched semblant, she did sure

The people's great compassion unto her allure.

Then up arose a person of deepe reach,

And rare insight hard matters to reveal;

That well could charme his tongue, and tune his speech,
 To all assayes; his name was called Zele :
 He gan that ladie strongly to appele
 Of many haynous crimes of her enured ;
 And with sharp reasons rang her such a pele,
 That those whom she to pity had allured
 He now t'abhorre and loath her person had procured.

First gan he tell how this, that seem'd so faire
 And *royally* aray'd, Duessa hight ;
 That false Duessa, which had wrought great care
 And mickle mischeefe unto many a knight
 By her beguiled and confounded quight :
 But not for those she now in question came,
 Though also those mote questioned her aright,
 But for vyld *treasons*, and outrageous shame,
 Which she against the *dred Mercilla* oft did frame.

All which whereas the prince had heard and seene,
 His former fancies ruth he gan repent,
 And from her party eftsoons was drawn cleene :
 But Artégall, with constant firm intent
 For zeal of justice, was against her bent :
 So was she guilty deemed of them all.

Then Zele began to urge her punishment,
 And to their *Queene* for judgement loudly call,
 Unto *Mercilla* myld, for justice 'gainst the thrall.

But she, whose princely breast was touched neare
 With piteous ruth of her so wretched plight,
 Though plaine she saw, by all that she did heare,
 That she of death was guiltie found of right,
 Yet would not let just vengeance on her light;
 But rather let, instead thereof, to fall

Few perling drops from her fair lamps of light;
 The which she covering with her purple pall,
 Would have the passion hid, and up arose with all.

Some clarkes doe doubt in their deviceful art
 Whether this heavenly thing whereof I treat,
 To weeten *Mercie*, be of justice part,
 Or drawne forth from her by divine extreate;
 This well I wote, that sooth she is as great,
 And meriteth to have as high a place :

Sith in th'Almightie's everlasting seat
 She first was bred, and borne of heavenly race;
 From thence poured down on men by influence of grace.

Who then can thee, *Mercilla*, thoroughly prayse,
 That herein doest all earthly princes pas ?
 What heavenly muse shall thy great honour rayse
 Up to the skies, whence first derived it was,
 And now on earth itselfe enlarged has,
 From th'utmost brink of the Americke shore,
 Unto the margent of the Molucas ?
 Those nations farre thy *justice* do adore;
 But thine owne people do thy *mercie* prayse much more.

Much more it prayed was of those two knights,
 The noble prince and righteous Artegall,
 When they had seene and heard her doome arights
 Against Duessa, damned by them all;
 But by her tempered without grief or gall,
 Till strong constraint did her thereto enforce:
 And yet even then ruig her wilful fall
 With more than needful natural remorse,
 And yielding the *last honour* to her wretched *corse*."

III. MISCELLANEOUS FLATTERY OF ENGLISH SOVEREIGNS.

On this subject it is sometimes difficult to distinguish between deserved eulogy and the praise by which, for sinister purposes, the minds of English sovereigns have been pampered and corrupted. The line, however, may sometimes be drawn with tolerable certainty. No Englishman would affirm that Bacon had outstepped the modesty of deserved commendation, however self-interested his own motives might have been, when he writes of Queen Elizabeth, with reference to her conduct during the general expectation of the arrival of the Spanish Armada. "See a queen, that, when her realm was to have been invaded by an army, the preparation whereof was like the travel of an elephant, the provisions were infinite, the setting forth whereof was the terror and wonder of Europe. It was not seen that her cheer, her fashion, her ordinary manner was anything altered; not a cloud of that storm did appear in that countenance, wherein peace doth ever shine. But with excellent assurance and advised security, she inspired her council, animated her nobility, redoubled the courage of her people; still having this noble apprehension that she would communicate her fortune with them, but that it was she that protected them, and not they her,

which she testified by no less demonstration than her presence in the camp." Milton's splendid sonnet addressed to Cromwell is a still more pleasing eulogium, as it emanated from a "soul" which spurned at being "bound" either in spiritual or "secular chains."

In like manner it is impossible not to perceive an admixture of truth and deserved praise in the following passages of Dryden's panegyric on King Charles II. :—

"His conversation, wit and parts,
His knowledge in the noblest, useful arts,
Were such dead authors could not give ;
But habitudes of those who live,
Who, lighting him, did greater lights receive :
He drained from all, and all they knew ;
His apprehension quick, his judgment true,
That the most learn'd, with shame, confess,
His knowledge more, his reading only less.

Amidst the peaceful triumphs of his reign,
What wonder, if the kindly beams he shed
Revived the drooping arts again,
If science raised her head,
And soft humanity, that from rebellion fled.

The officious muses came along,
A gay harmonious quire, like angels ever young ;
The muse, that mourns him now, his happy triumph sung."

But it is very easy to detect the quintessence of adulation, where Spenser is willing to offer up his own fame as a sacrifice on the altar of Queen Elizabeth as of a tenth muse :—

"Nor only favours them that it possess,
But is herself a *peerless poetesse*.
Most peerless prince, most peerless poetesse !
The true Pandora of all heavenly grace,
Divine Elisa !"

Puttenham, the author of a treatise on the art of poetry, writing with reference to a sonnet by the queen, which, unfortunately for her poetical fame, has been handed down to us, after slightly commending Spenser by the name of the "gentleman who wrote the Shepherd's Calendar," observes, "I find none example in English metre so well maintaining the figure *exargesia*, or the gorgeous, as

that ditty of her majesty's making, passing sweet and harmonical. Which figure being, as its name purporteth, the most gorgeous of all others ; it asketh in reason to be reserved for a last compliment, and decyphered by a lady's pen, herself being the most beautiful, or rather beauty of queens."

Spenser writes thus of Queen Elizabeth's beauty, in various passages of his "Faery Queen," which are here collected ; they conclude with a compliment to her *hair-dressing* :—

"Her *face* so fair, as flesh it seemed not,
 But heavenly portrait of bright angels' hew ;
 Clear as the sky, without or blame or blot,
 Through goodly mixture of complexion's dew.
 And in her *cheeks* the vermeil red did shew,
 Like roses in a bed of lilies shed,
 The which ambrosial odors from her threw
 And gazer's sense with double pleasure fed,
 Able to heal the sick, and to revive the dead.
 In her fair *eyes* two living lamps did flame,
 Kindled above at th' heavenly maker's light,
 And darted fiery beams out of the same
 So passing persant, and so wondrous bright
 That quite bereav'd the rash beholder's sight.
 Her yvorie *forehead*, full of beauty brave
 Like a broad table, did itself dispred,
 For love his lofty triumphs to engrave,
 And write the battles of his great Godhed.
 All good and honour might therein be red :
 For there their dwelling was. And when she *spake*,
 Sweet words, like dropping honey, she did shed ;
 And 'twixt the pearls and rubies softly brake
 A silver sound, that heavenly music seem'd to make.
 Next with a golden bauldrike, which forelay
 Athwart her snowy *breast*, and did divide
 Her dainty *paps* ; which like young fruit in May
 Now little gave to swell, and being tide
 Through her thin weed, their places only signified.
 Her *yellow* locks, crisped like golden wire
 About her shoulders weren losely shed,
 And, when the wind amongst them did inspyre,
 They waved like a penon wyde dispred,
 And low behind her back were scattered.
 And whether art it were, or heedless hap,
 As through the flow'ry forest rash she fled,
 In her rude heares sweet flowers themselves did lap,
 And flourishing fresh leaves, and blossoms did enwrap."

Queen Elizabeth's picture was a subject which procured her many direct and oblique flatteries. Thus by an order of her council, dated July 30, A. D. 1596, "A warrant is issued to her majesty's serjeant painter, and to all public officers, to yield him their assistance touching the offence committed by divers unskilful artisans, in unseemly and improperly painting, graving, and printing of her majesty's person and visage, to her majesty's great offence, and the disgrace of that beautiful and magnanimous majesty wherewith God hath blessed her. Requiring them to cause all such to be defaced, and none to be allowed but such as Her Majesty's serjeant painter shall first have sight of." In Rymer's "*Fœdera*" will be found a warrant for painting King James's picture.

Spenser is not wanting to his sovereign or himself on this delicate subject of the picture :

" But living art may not least part expresse
Nor life-resembling pencill it can paint,
All were it Zeuxis or Praxiteles,
His dædale hand would fail, and greatly faynt,
And her perfections with his error taynt.
Ne poet's witt, that passeth paynter farre
In picturing the parts of beauty daynt,
So hard a workmanship adventure darre,
For fear, through want of words, her excellence to marre."

The queen's picture also provoked the muse of Sir T. Davies, the eminent lawyer. In his twenty-six acrostics on the words "*Elisabetha Regina*," the following notice of the picture occurs :

" Extreme was his audacity,
Little his skill that finished thee.
I am ashamed and sorry
So dull her counterfeit should be,
And she so full of glory.
But here are colors red and white,
Each line and each proportion right;
These lines, this red and whiteness,
Have wanting yet a life and light,
A majesty and brightness.
Rude counterfeit, I then did err,
E'en now, when I would needs infer
Great boldness in thy maker.
I did mistake—he was not bold;
Nor durst his eyes her eyes behold,
And thus did he mistake her."

The ante-Shaksperian dramatists, as Lily, Peele, Lodge, and Greene, abound in compliments to Queen Elizabeth. Lodge wrote a play with Greene, called the "Looking-glass for London," in ridicule of the objections of the puritans to theatres. The play is an application of the history of Nineveh to the city of London. In one of the scenes, Jonas is cast out of the whale upon the stage: and various plagues are threatened to London, but are averted by the virtues of Queen Elizabeth. Greene, who, in his "Groatsworth of Wit," affords the first historical notice of Shakspeare, under the names of Shakscene and Factotum, wrote a play called "Friar Bacon and Friar Bungay." The devil is introduced upon the stage, and Friar Bacon is made to deliver a prophecy complimentary to the Queen. Lily, in his "Endymion," in which dancing fairies were introduced previous to their use by Shakspeare, flatters Queen Elizabeth under the character of Cynthia. Peele, though a dramatist, was particularly distinguished as a writer of pageants: he composed a pageant which was exhibited before Queen Elizabeth, called "The Arraignment of Paris." Paris is reproved for adjudging the prize to Venus, and the virgin goddess, Diana, seizes the opportunity of paying some extravagant compliments to Queen Elizabeth, to whom, in the end, the apple of discord is presented.

But the most celebrated pageant, in which flattery was offered to Queen Elizabeth, was the challenge of the four "Foster Children of Desire," Lord Arundel, Lord Windsor, Philip Sidney, and Fulke Greville. They summoned the Queen to surrender the Castle of *Perfect Beauty* in which her Majesty was seated. A rolling mount and scaling-ladders were applied to the castle walls. After firing cannons with sweet powder, and the arrival of twenty knights in fanciful devices to the Queen's rescue, the "Foster Children of Desire" presented an olive branch to the Queen in token of their humble submission. Many flattering speeches were delivered on both sides; the messenger of the challengers, (a youth clad in red and white, the colours of Desire,) concludes his obsequious summons thus: "You shall now be summoned to yield; which, if it be rejected, then look for the affectionate alarm to be followed with desirous assault. The time approaches for their approaches, but no time shall stay me from wishing, that however this succeed, the world may long enjoy its chiefest ornament, which decks it with herself, and herself with the love of goodness."

Shakspeare's allusions to Queen Elizabeth in his "Winter's Tale," and "Midsummer Night's Dream," and his celebrated prophecy of Cranmer in the play of "Henry VIII.," with the poet's negligent adaptation of it to King James, whereby, as Dr. Johnson remarks, Cranmer is made to rejoice in the consequences of Elizabeth's death, and afterwards to be sorry for their cause, are too well known to require more than a simple reference in this place.

Another of the first order of dramatists, Ben Jonson, has offered the homage of his talents to Queen Elizabeth. His excellent comedy "Every Man out of his Humour," was acted before her Majesty. The epilogue adverts to her Majesty's presence; it is spoken by Macclente, a lean envious person.

"Never till now did object greet mine eyes
 With any light content : but in her graces
 All my malicious powers have lost their stings ;
 Envy is fled my soul at sight of her.
 And she hath chased all black thoughts from my bosom,
 Like as the sun doth darkness from the world.
 My stream of humour is run out of me,
 And as our city's torrent—bent t' infect
 The hallow'd bowels of the silver 'Thames—
 Is check'd by strength and clearness of the river,
 Till it hath spent itself even at the shore :
 So in the ample and unmeasured flood
 Of her perfections, are my passions drown'd :
 And I have now a spirit as sweet and clear
 As the more rarefied and subtle air ;
 With which, and with a heart as pure as fire,
 Yet humble as the earth, do I implore (*kneels*)
 O Heaven ! that she whose presence hath effected
 This change in me, may suffer most late change
 In her admired and happy government.
 May still this island be called fortunate,
 And rugged Treason tremble at the sound,
 When Fame shall speak it with an emphasis.
 Let Foreign Polity be dull as lead,
 And pale Invasion come with half a heart,
 When he but looks upon her blessed soil ;
 The throat of War be stopt within her land,
 And turtle-footed Peace dance fairy rings
 About her court ; where never may there come
 Suspect or Danger, but all trust and safety.
 Let Flattery be dumb, and Envy blind,

In her dread presence ; Death himself admire her :
 And may her virtues make him to forget
 The use of his inevitable hand.
 Fly from her, Age ; sleep, Time, before her throne ;
 Our strongest wall falls down when she is gone."

Bacon, at the time when he was ambitious to be employed in Queen Elizabeth's service, wrote an elaborate eulogy on the queen's gait, voice, eyes, colour, neck, breast, hair, applying Latin quotations to each of these themes, which had before served, in the works of the Roman poets, as descriptions of the goddess Venus. Concerning the queen's gift of speech, he says, "What should I speak of her excellent gift of speech, being a character of the greatness of her conceit, the height of her degree, and the sweetness of her nature? What life, what edge is there in those words and glances, wherewith, at pleasure, she can give a man long to think; be it that she mean to daunt him, to encourage him, or to amaze him! How admirable is her discourse, whether it be in learning, state, or *love*! What variety of knowledge; what rareness of conceit; what choice of words; what grace of utterance! Doth it not appear that though her wit be as the adamant of excellencies, which draweth out of any book, ancient or new, out of any writing or speech, the best; yet she refineth it, she enricheth it far above the value wherein it is received?" On the delicate subject of the queen's virginity Bacon writes: "That to speak of her fortune, that which I did reserve for a garland of her honour, and that is, that she liveth a virgin! so it is that which maketh all her other acts more sacred, more august, more divine. Let them leave children that leave no other memory of their times. *Brutorum æternitas, soboles.*" He then endeavours to make out from the examples of Julius and Augustus Cæsar, Alexander, Sylla, and Constantine, that there is not to be met with in history, "a person of rare felicity, but either he died childless, or his line was spent soon after his death, or else was unfortunate in his children."

On one occasion Lord Keeper Egerton appears to have entangled himself in a dilemma, by speaking of the danger of the queen's life from Lopez, a physician who had been executed for receiving a bribe to poison her. He said, "I have seen her Majesty wear at her girdle the price of her blood, I mean the jewels given to her physician;" but recollecting that the taking of the jewels for her own use might throw some discredit on the motives for hanging the physician, he

adds, "but she hath rather worn them in triumph, than for the price, which hath not been greatly valuable;" forgetting that physicians are not likely to kill kings and queens for the reward of indifferent jewels.

The "Princely Pleasures of Kenilworth," which lasted for nineteen days, during which all the clocks in Kenilworth Castle were stopt, are related by the principal poet employed on the occasion: this was Gascoigne. This poet's "Supposes," his "Art of Poetry," and his "Steel Glass," are the earliest specimens of a play in English prose, an English work of criticism on belles-lettres, and an English satire. He performed at Kenilworth, the part of a wild man, conversing with an echo, and pampered the queen's vanity in orations delivered by a multitude of fantastic personages. There is a manuscript composition by Gascoigne in the British Museum, called the "Grief of Joy." It was apparently the copy he presented to Queen Elizabeth. In the dedication he dwells with rapture on the contemplation of kissing the queen's *delicate* hand; and wherever her name is mentioned, the letters of the manuscript are in gold.

In the manuscript diary of a barrister who lived in the reigns of Elizabeth and James, there is an entry concerning a visit of the queen to Lord Burleigh's house in the Strand. It mentions that, at the queen's entrance, three women presented themselves, a maid, a widow, and a wife; they each contended for the superiority of their own states, but the maid gained the day in the controversy. This was in the year 1602, not long before the queen's death. In the preceding year there is an entry in the same diary, relating a festival at the Lord Keeper's, where the queen was present: it is mentioned that there was a dialogue between Lord Burleigh and a dairy-maid, and a drawing of lots. The queen drew "Fortune's wheels," with this motto:

"Fortune must now no more in triumph ride,
The wheels are yours which did her chariot guide."

Harington, Queen Elizabeth's "saucy godson," turned to his own account a compliment on the queen's manner of reading poetry. He placed the following verses under her cushion:—

"For ever dear, for ever dreaded prince!
You read a verse of mine a little since,

And so *pronounced* each word and every letter,
 Your gracious reading graced my verse the better.
 Since then your highness doth by gift exceeding
 Make what you read the better for your reading,
 Let my poor muse your pains thus far importune,
 Like as you read my verse, so read my fortune."

The diary which Harington kept of transactions at the court of Elizabeth, shows the kind of incense that was habitually offered to the queen's vanity. Thus he writes, "The queen stood up, and bade me reach forth my arm to rest hers thereon. Oh, what a sweet burden to my next song! Petrarch shall eke out good matter for this business."

Puffenham, the author of the treatise on the Art of Poetry above cited, wrote adulatory verses on the queen's virginity, which he called Partheniads. In one of his works (he wrote fourteen) he lays down rules for behaviour at court, and takes this occasion of complimenting the queen. After censuring the Emperor Ferdinand for "running up and down stairs with so swift and nimble a pace as almost had not become a very mean man who had not gone on some hasty business," he continues, "But, in a prince, it is decent to go slowly, and to march with leisure, and with a certain grandity rather than gravity, as our sovereign lady and mistress, the very image of majesty and magnificence, is accustomed to go generally; unless it be when she walketh apace for her pleasure, or to *catch her a heat* in the cold mornings. Nevertheless it is not so decent in a meaner person, as I have discerned in some counterfeit ladies in the country, which use it much to their own derision. This comeliness was wanting in Queen Mary, otherwise a very good and honourable princess."

Queen Elizabeth received many flatteries through the vehicle of impresses upon shields. She delighted in coining such devices for her own mottoes. Her courtiers adopted such as the following:—A white shield, motto: "*Fatum inscribat Eliza.*" The full moon in heaven: "*Quid sine te cœlum,*" in allusion to Elizabeth's fancy name of Cynthia. The Zodiac with Virgo rising; a star being placed in the left hand of Virgo: "*Mihi vita, spica Virginis.*" A Zodiac with no constellations but those of Leo and Virgo.

Of a like nature is the motto upon one of the Queen's coins, in allusion to her head which appears upon it: "*Ditior in toto non alter circulus orbe.*" There is extant a single specimen of a broken

crown piece struck in the time of Elizabeth. It is supposed that the coinage was countermanded, on account of the Queen not being satisfied with her own likeness upon it.

The following ingenious piece of flattery was devised for Queen Elizabeth by Sir R. Cecil.

“ A person, in the dress of a Post, enters, with letters, exclaiming :—

“ ‘ Is Mr. Secretary Cecil here ? Did you see Mr. Secretary ? Gentlemen, can you bring me to Mr. Secretary Cecil ?

“ ‘ *A Gentleman Usher.* Mr. Secretary Cecil is not here. What business have you with him ?

“ ‘ *Post.* Marry, Sir, I have letters that import Her Majesty’s service.

“ ‘ *Usher.* If the letters concern the Queen, why should you not deliver them to the Queen ? You see she is present, and you cannot have a better opportunity, if the intelligence be so important, and concern herself, as you say.’

“ After some high-flown compliments to the various perfections of Her Majesty, the Post says :—

“ ‘ Well, I am half persuaded to deliver the letters to her own hand ; but, Sir, they come from the Emperor of China, in a language that she understands not.

“ ‘ *Usher.* Why, then you are very simple, Post. Though it be so, yet these Princes, as the Great Turk and the rest, do always send a translation in Italian, French, Spanish, or Latin, and then it’s all one to her.

“ ‘ *Post.* Doth she understand all these languages, and hath never crossed the seas ?

“ ‘ *Usher.* Art thou a Post, and hast ridden so many miles, and met with so many men, and hast not heard what all the world knows, that she speaks and understands all the languages in the world, which are worthy to be spoken or understood ?

“ ‘ *Post.* It may be that she understands them in a sort, well enough for a lady, but not so well as secretaries should do.

“ ‘ *Usher.* Tush ! what talkest thou of secretaries ? As for one of them, whom thou most askest for, if he have anything that is worth talking of, the world knows well enough where he had it, for he kneels every day where he learns a new lesson. Go on, therefore ; deliver thy letters. I warrant thee she will read them, if they be in any Christian language.

“ ‘ *Post.* But is it possible that a lady, born and bred in her own island, having but seen the confines of her own kingdom, should be able, without interpreters, to give audience and answer still to all foreign ambassadors?

“ ‘ *Usher.* Yea, *Post*, we have seen that so often tried, that it is here no wonder. But, to make an end, look upon her. How thinkest thou—doest thou see her? Say truly, sawest thou ever more majesty or more perfection met together in one body? Believe me, *Post*, for wisdom and policy she is as inwardly suitable as externally admirable.

“ ‘ *Post.* Oh, Sir, why now I stand back, the rather you have so daunted my spirits with that word; for first you say she hath majesty, and that, you know, never likes audacity. Next you say, she is full of policy. Now, what do I know, if policy may not think fit to hang up a *Post* if he be too saucy?

“ ‘ *Usher.* Oh, simple *Post*, thou art the wilfullest creature that liveth. Dost thou not know that, besides all her perfections, all the earth hath not such a Prince for affability; for all is one.—Come gentleman, come serving-man, come ploughman, come beggar,—the hour is yet to come that ever she refused a petition. Will she, then, refuse a letter that comes from so great an Emperor and, for her service? No, no; do as I bid thee. I should know some things, that have been a quarter-master these fifteen years. Draw near her, kneel down before her, kiss thy letters and deliver them, and use no prattling while she is reading them; and if ever thou have worse words than, God have mercy, fellow! and Give him a reward! never trust me while thou livest.’ ”

Bacon adopted a very ingenious way of flattering James, when he published a collection of ancient and modern apophthegms, by introducing a considerable number of the King's own witticisms. Two of these examples, one in a speech addressed to the parliament, and another to the council, will show that, in the opinion of the courtly collector, wherever there was a point and sting, the King could *do no wrong* in regard to the propriety of his jokes. Bacon writes, that James, having made to his parliament “an excellent and large declaration,” concluded thus: “I have now given you a clear mirror of my mind; use it, therefore, like a mirror, and take heed how you let it fall, or how you soil it with your breath.” Again, His Majesty used to say to the Lords of His Council, when they had sat upon any great matter, and came from Council into him, “Well, you have sat, but what have you hatched?”

The following glozing passages are taken promiscuously from Bacon's works:—"Without flattery, I think your Majesty the best of kings, my lord of Buckingham the best of persons favoured, and I hope I am not the worst of chancellors." Queen Elizabeth "was happy in all things else, but most happy in her successor." "His majesty's sacred ear is open to the breath of all virtues." The king's Basilikon Doron "filled the whole realm with a good perfume." "Other kings' honours are only counters set on high, but James's are real dignities, by the co-operation of his grace." "His Majesty is the best pen of kings, much more the best subject for a pen." "I dare avouch, if the records of time err not, James to be the learnedest king that hath reigned." "Your majesty is of men the greatest master of reason; an universal scholar, or rather master."

Lord Bacon, when he was chancellor, had sufficient worldly wisdom to keep his own splendid talents in due subordination to the king's fustian wordiness on such occasions. He spoke to this effect at the opening of the Parliament called in the year 1620—"May it please your Majesty! I am struck with admiration in respect of your profound discourses, with reverence of your royal precepts, and contentment in a number of gracious passages which have fallen from your majesty in your speech. It is a saying of Solomon, somewhat dark but apt, 'that the words of the wise are like nails and pins fastened by the master of the building in the midst of assemblies,' so in regard to the reverence of your majesty's words, they are like nails that strike through and through, first in the memory, then in the hearts of the hearers. For myself, I hold it a great commendation in a chancellor to be silent, when such a king is by, who can so well deliver the oracles of his mind. Only, Sir, give me leave to give my advice to the upper and lower house briefly in two words, '*Nosce teipsum.*' I would have the parliament know itself in a modest carriage to so gracious a sovereign." On a similar occasion on opening the business of Parliament, Bacon compliments James on his parliamentary speeches by saying, "His majesty hath shown himself to be *Lex loquens*, and to sit on the throne, not as a dumb statue, but as a speaking oracle." And again: "The king's words, in regard to the sweetness of them, do not pinch; yet, in regard of the weight and wisdom of them, I know they pierce through and through, that is, both in your memories, and into your affections." Of the king's writings, he says: "His

majesty has made that truth, which was before titular, in that he hath verified the style of 'Defender of the Faith.' Wherein his majesty's pen hath been so happy, as though the deaf adder will not hear, yet he is charmed that he doth not hiss."

At an entertainment on May-day, King James and his queen were accosted at the porch of the house of one of his nobility by the *Penates*. They led their majesties into the garden, where Mercury received them with a flattering speech, and introduced to them Maia seated in her bower, where she was attended by Aurora, Zephyrus and Flora. The following song is then sung by three allegorical characters.

" See, see, O see who here is come a-maying,
The Master of the Ocean
And his beauteous Orian.

Why left we our playing?

To gaze, to gaze

On them that gods no less than men amaze.

Up, nightingale, and sing;

Sing, sing, sing, sing,

Raise, lark, thy note, and wing,

All birds their music bring,

Sweet robin, linnet, thrush,

Record from every bush

The welcome of the King

And Queen.

Whose like were never seen,

For good, for fair,

Nor can be, though fresh May

Should every day

Invite a several pair.

No, though she should invite a several pair."

After dinner Mercury introduces Pan to the royal party; who fills wine into glasses from Bacchus's spring, and presents them, with appropriate speeches, to the king and queen, and the rest of the company. Mercury make apologies for the rudeness of Pan's verses, and indeed several of the speeches of that rural divinity would not, in the present day, be tolerated in refined society.

On King James's visit to Linlithgow, a red lion made of plaster, in which was inclosed one James Wiseman, schoolmaster of the town, thus roars out to his majesty:—

" Thrice royal Sir, here I do you beseech,
Who art a lion, hear a lion's speech:

A miracle, for since the days of Esop,
 No lion till these times, his voice dared raise up
 To such a majesty; then *king of men!*
 The *king of beasts* speaks to thee from his den,
 Who (though he now be here inclosed in plaster)
 When he is free is Lithgow's wise selffoolmaster."

At the delivery of Theobalds, from Lord Burleigh to the king and queen, Ben Jonson introduces the genius of the place bewailing his hard fate at parting with his master; but by the explanations of Mercury, who summons the Fates, Clotho, Lachesis and Atropos, to reveal the state and virtues of the future owners of the habitation, the genius is transported with pleasure, and joyfully delivers the keys to the king and queen. A song winds up the ceremony; it begins thus:—

"O blessed change!
 And no less glad, than strange.
 Where we that lose have won;
 And for a *beam*, enjoy the *Sun*."

The poetry and mottoes for the pageants exhibited at the procession of King James through London, on his way to be crowned, were prepared by Ben Jonson and Dekker. Among a multitude of devices and orations, there is a dialogue highly complimentary to James, held between the genius of the City and the river Thames, opposite Fenchurch. And at Temple Bar there was a Flamen preparing for a sacrifice on an altar: the genius of the City interrupts him and sends him away; and for the victim which was to have been immolated on the altar, substitutes her *City's heart*.

"My City's heart, which shall for ever burn
 Upon this altar, and no time shall turn
 The same to ashes: here I fix it fast,
 Flame bright, flame high, and may it ever last.
 Whilst I before the figure of thy peace
 Shall tend the fire, and give it quick increase
 With prayers, wishes, vows,"

Jonson boasts that all his devices on this occasion declared themselves to the "sharp and learned without cloud or obscurity," unlike the puppets of common artificers which require some person to write upon or over them, "this is a dog," "this is a hare." And as for the multitude, "no doubt but their *grounded* judgments did gaze, said it was fine, and were satisfied."

When the King of Denmark was entertained by James at Theobalds, Ben Jonson prepared the mottoes which were hung up about the house and grounds. The kings were received at the porch of the inner court, by three allegorical characters representing *Hours*, bearing respectively a sun-dial, clock, and hour-glass. Jonson makes the hours thus to flatter the king.*—

“Miraris, cur hospitio te accepimus Horæ,
Cujus ad obsequium non satis annus erit:
Nempe, quod adveniant ingentia gaudia raro,
Et quando adveniant vix datur hora frui.”

The foregoing was intended for the reception of the king; the following was for his departure—

“Hospitio qui te cepit, famulantibus Horis,
Cedere ab hinc, nulla concomitante, sinit
Nempe omneis horas veniendi duxit amicas,
Sed discedendi nulla Minuta probat.”

Which devices may be thus rendered,—

“Doubtless you wonder, why the Hours appear
To bid you welcome; when the perfect year
Will not suffice to give you honour due?
Our meaning is—your visit makes it true,
That great delights are rarely in our power,
And when they come, they scarcely last an hour.”

And for the departure.

“The Hours, which, when you came, your servants were,
In your departing train do not appear;—
'Tis 'cause your coming fill'd whole hours with bliss,
Your going every Minute deems amiss.”

Jonson's “Mask of Gypsies,” was a particular favourite with King James, for it was acted before him at Burleigh on the Hill, Windsor, and at Belvoir. The scene opens with a gypsy leading a horse laden with five children, and another with poultry. The captain of the troop, who was, in fact, James' favourite Duke of Buckingham, feels the king's hand and tells his fortune; and the second, third, and fourth gypsies tell the fortunes of Prince Charles

* For flatteries of King James composed in the Latin language, see the numerous epigrams of the Cambridge wights on the occasion of his visit to that University. The Public Orator addressed the Prince by the appellation of *Jacobissime Carole!*

and of the rest of the company in appropriate verses. Afterwards a number of clowns and country girls are introduced, and the gypsies pick their pockets, which have ludicrous contents; such as “a jet ring to draw Jack Straw on holidays,” a “bowed groat,” “an enchanted nutmeg gilded over,” and a book called “the Practice of Piety.” But the principal passage of personal flattery, is that wherein the captain of the gypsies, on taking the king’s hand, says:—

“With you, lucky bird, I begin, let me see,
I aim at the best, and I trow you are he.
Here’s some luck already, if I understand
The grounds of mine art, here’s a gentleman’s hand,
I’ll kiss it for luck sake. You should by this line
Love a horse and a hound, but no part of a swine.
To hunt the brave stag, not so much for the food
As the weal of your body and the health of your blood.
You’re a man of good means, and have territories ’store
Both by sea and by land, and were born, Sir, to more,
Which you like a lord and a prince of your peace,
Content with your havings, despise to increase.
You are no great wench, I see by your table,
Although your *mons-veneris* says you are able.
You live chaste and single and have buried your wife,
And mean not to marry, by the line of your life.
Whence he that conjectures your qualities, learns
You are an honest good man, and have care of your bearns.
*Your Mercury’s hill too, a wit doth betoken,
Some book-craft you have, and are pretty well spoken.*
But stay—in your Jupiter’s mount, what is here?
A king! a monarch! what wonders appear!
Iligh, beautiful, just, a Jove in your parts,
A master of men, and that reign in their hearts.
I’ll tell it my train
And come to you again.”

A song follows, the captain returns, and the gypsies address the king as “James the Just.” The piece ends with a blessing on the sovereign and his five senses; being a litany, in which the poet deprecates the use of various things enumerated which are offensive to each sense; and, in deference to his majesty’s performance, “The Counterblast to Tobacco,” this litany prays that the sovereign and his *smelling* may be preserved—

“From tobacco, with the type
Of the devil’s glyster-pipe.”

In Jonson's "Love freed from Ignorance," a Sphynx, attended by twelve dancing *she-fools*, holds Love in captivity till he can explain a riddle. The priests of the Muses come and rescue Love, by interpreting the riddle to signify England and King James.

"First, Cupid, you must cast about
To find a world, the world without,
Wherein what's done the eye doth do
And is the light and treasure too;
This eye still moves, and still is fixt,
And in the powers thereof are mix'd
Two contraries, which time till now
Nor fate knew where to join or how.
Yet if you hit the right upon
You must resolve them all by one."

The contraries are *majesty* and *love*, which Jonson, having on his courtly as well as learned sock, discovered to be united by James in England; but which, according to a classical authority, are not met together elsewhere.

"Non bene conveniunt, nec in una sede morantur
Majestas et amor."

Charles I. received several of Ben Jonson's literary compliments both when he was Prince of Wales, and after he came to the throne. In the Masque of Gypsies he is thus addressed :

"As my captain hath begun
With the sire, I take the son;
Your hand, Sir!
Of your fortune be secure
Love and she are both at your
Command, Sir!
See what states are here at strife
Who shall tender you a wife,
A brave one.
And a fitter for a man
Than is offer'd here, you can
Not have one.
She is sister of a star,
One the noblest now that are,
Bright Hesper;
Whom the Indians in the East
Phosphor call, and in the West
Hight Vesper.

Courses even with the sun
Doth her mighty brother run,
For splendour.

Till yourself shall come to see
What we wish yet far to be
Attending ;
For it skills not when or where
That begins which cannot fear
An ending,
Since your name in peace or wars,
Nought shall bound, until the stars
Uptake you ;
And to all succeeding view
Heaven a constellation new
Shall make you."

After Charles came to the throne, among the other masques performed at Court, the king exhibited one, in which the queen and her ladies performed. It was called "Chloridia, or the Rites of Chloris, the goddess of flowers." In return for this masque, the queen exhibited another called, "The Triumph of Love through Callipolis, or the City of Beauty," in which the king performed. There was an antemasque of depraved lovers, as the sordid lover, the sensual, boasting, bribing, and the like, of whom the chorus makes a lustration with censers. Afterwards fifteen personages are introduced, with a Cupid before each, holding a lighted torch ; these characters represented the various species of honourable love. In the middle stood the king, exhibited as the type of *heroic* love. After much dancing and singing, and several changes of scene, the masque concludes with the shooting up of a palm-tree, allegorical of the nuptial felicity of the king and queen. It had an imperial crown on its top, and from it several roots issued, which were twined together, and after embracing the stem, flourished through the crown.

Cardan's character of Edward VI. may be thought in some degree more encomiastic than is consistent with probability.

"Aderant enim illi gratiæ. Linquas enim multas adhuc puer callebat, Latinam. Anglicam patriam, Gallicam, Græcæ, Italiæ, et Hispanæ et forsan alienam. Non illi Dialectica deerat, non naturalis philosophæ principia, non musicæ. Mortalitatis nostræ imago, gravitas Regiæ Majestatis, indoles tanto principe digna. In universum magno *miraculo* humanarum rerum, tanti, ingenii et tantæ expectationis, puer educabatur. *Non hæc Rhetorice exornata*

veritatem excedunt, sed sunt minora." Afterwards he says, "Fuit in hoc monstrificus puellus."

A letter written to King Henry VII., and signed by ten ladies of his court, after visiting the king's new great ship at Portsmouth, contains this passage: "Your new great ship, and the rest of your ships at Portsmouth, are things so goodly to behold, that, in our lives, we have not seen (*excepting your royal person, and my lord the prince your son*) a more pleasant sight."

The following preamble of the statute of the 37 Henry VIII. c. 25, may be thought to express the language of the hearts of Henry VIII.'s subjects with as much sincerity as, in another statute, the abbots are represented to have voluntarily surrendered to the king their monasteries:

"We the people of this realm, have for the most part of us so lived under his majesty's sure protection, and yet so live, out of all fear and danger, as if there were no war at all, even as the small fishes of the sea, in the most tempestuous and stormy weather do lie quietly under the rock, or bank side, and are not moved with the surges of the water, nor stirred out of their quiet place, howsoever the wind bloweth."

Waller, in his poem on King Charles II.'s improvements in St. James's park, says, that the king had made a new river in the park, which was a greater achievement than building a town. Like Orpheus or Amphion, he had suddenly planted trees round its banks. The ladies will there angle for fishes and men. A new well polished mall, continues the poet,

" Gives us the joy
To see our prince his matchless force employ ;
His manly posture, and his graceful mien,
Vigor and youth in all his motion seen.
His shape so lovely, and his limbs so strong,
Confirm our hopes we shall obey him long.
No sooner has he touch'd the flying ball
But 'tis already more than half the mall,
And such a fury from his arm has got,
As from a smoking culverin 'twere shot."

Dr. Johnson, in criticizing Prior's "Carmen Seculare" observes, that in this poem "he exhausts all his powers of celebration. I mean not to accuse him of flattery. He probably thought all that he writ, and retained as much veracity as can be properly exacted

from a poet professedly encomiastic." He observes, "The death of Queen Mary produced a subject for all the writers; perhaps no funeral was ever so poetically attended. Dryden, indeed, as a man discountenanced and deprived, was silent; but scarcely any other maker of verses omitted to bring his tribute of tuneful sorrow. An emulation of elegy was universal. Maria's name was not confined to the English language, but fills a great part of the *Musæ Anglicanæ*. Prior, who was both a poet and a courtier, was too diligent to miss this opportunity of respect. He wrote a long ode, which was presented to the king, *by whom it was not likely to be ever read.*"

The sovereigns who have sat on the English throne since the Revolution, have not been by any means conspicuous for their patronage of the muses, nor have their ministers generally aspired after the fame of Mæcenas. Several of their "Poets Laureat" have excited contempt and ridicule by their poetical imbecility. The poet Gray, in a letter to Mason, expresses himself anxious to learn who was to be promoted to the vacant laureatship; he writes, "I interest myself a little in the history of it, and rather wish somebody may accept it, who will retrieve the credit of the thing, if it be retrievable. Eusden (the deceased laureat) was a writer of great hopes in his youth, though, at last, he turned out a drunken parson."

The names of several modern encomiasts of English sovereigns have, "at some unlucky time," acquired a sinister immortality by "hitching in the rhymes" of the discontented and sarcastic muse of Pope. He is perpetually sliding into his own verses the word "king" for the illustration of every crime, vice, folly or foible, insomuch that his habit amounts to a kind of poetical monomania. This peculiar vein of Pope is happily imitated by Hawkins Browne, in his verses on tobacco, in which he travesties the styles of the principal English poets. The lines which he supposes Pope to have indited in praise of tobacco, conclude

"Come to thy poet, come with healing wings;
And let me taste thee, unexcised *by kings!*"

Among numerous sarcasms on laureats and their praises of kings, Pope writes,

"And, when I flatter, let my dirty leaves,
(Like journals, odes, and such forgotten things
As Eusden, Philips, Settle writ of *kings*,)
Clothe spice, line trunks, or fluttering in a row,
Befringe the rails of Bedlam or Soho."

Swift, in his "Directions for making a Birth-day Song," has done a service in exposing to ridicule the fulsome flatteries lavished on sovereigns, analogous to that of Cervantes in laughing down knight-errantry. The following extract from that poem will remind the reader of many flatteries detailed in the preceding pages, especially those regarding the poetry and beauty of Elizabeth, the wrong sustained by the saints and angels from the prolongation of the life of Charles II., and, in particular, as concerns the transactions discussed in this work, the *justice* of *James*.

" Thus, your encomium, to be strong,
Must be applied directly wrong :
A tyrant for his mercy praise,
And crown a royal dunce with bays ;
A squinting monkey load with charms,
And paint a coward fierce in arms.
Is he to avarice inclined ?
Extol him for his generous mind :
And when we starve for want of corn,
Come out with Amalthea's horn.
For all experience this evinces
The only art of pleasing Princes.
For Princes love you should descant
On virtues which they know they want.'

Swift, in another poem, his " Rhapsody," seems to give poets credit for sincerity in writing of *deceased* sovereigns.

" A Prince the moment he is crown'd
Inherits every virtue round,
As emblems of the sovereign power,
Like other baubles in the Tower.
Is generous, valiant, *just*, and wise,
And so continues till he dies :
His humble Senate this professes :
In all their speeches, votes, addresses.
But once you fix him in a tomb,
His virtues fade, his vices bloom,
And each perfection wrong imputed,
Is fully at his death confuted.
The loads of poems in his praise
Ascending, make one funeral blaze ;
His panygerics then are ceased,
He grows a tyrant, dunce, or beast

As soon as you can hear his knell,
 This God on earth turns devil in hell.
 And, lo ! his ministers of state,
 Transform'd to imps, his levy wait,
 Where, in the scenes of endless woe,
 They ply their former arts below ;
 And as they sail in Charon's boat,
 Contrive to bribe the judge's vote.
 To Cerberus they give a sop,
 His treble barking mouth to stop.
 Or in the ivory-gate of dreams,
 Perfect Excise and South-Sea schemes,
 Or hire their party pamphleteers
 To set Elysium by the ears.

Then, poet ! if you mean to thrive,
 Employ your muse on kings alive,
 With prudence gathering up a cluster
 Of all the virtues you can muster,
 Which form'd into a garland sweet,
 Lay humbly at your monarch's feet,
 Who, as the odours reach his throne,
 Will smile, and think them all his own.
 For law and gospel doth determine,
 All virtues lodge in royal ermine,
 (I mean the oracles of both,
 Who shall depose it upon oath.)
 Your garland in the following reign,
 Change but the names, will do agan."

It is conceived that Swift was writing with reference to the two first Princes of the House of Brunswick, the flattery of whom was not a way to the hearts of their heirs apparent. Thus the following lines on the bringing of Queen Elizabeth's body from Richmond, where she died, to Whitehall, will not be suspected of being written with a view to ingratiate the poet with King James, any more than they were likely to captivate the Muses.

"The queen was brought by water to Whitehall,
 At every stroke the oars tears let fall.
 More clung about the barge; fish under water
 Wept out their eyes of pearl, and swome blind after.
 I think the bargemen might, *with easier thighs,*
 Have rowed her thither in her people's eyes.
 For howsoe'er, thus much my thoughts have scann'd,
 Sh'ad come by *water*, had she come by *land*."

And the writer of an elegy on Prince Henry, son of James I., who relates the following singular manner in which his poem was brought to a close, was probably equally free from the vice of court flattery :

“ Farewell! *Perforce*, I cease to mourn,
For tears my ink to water turn.”

Swift advises his birth-day bard (and the advice may be thought worthy of consideration under the present reign,) to bestow a portion of his praises on royal children.

“ *Three* graces, by *Lucina* brought her;
Just *three*, and every grace a *daughter*.
Here many a king his heart and crown
Shall at their snowy feet lay down.
In royal robes they come by dozens,
To court their English German cousins.
Besides a *pair* of *princely* babies,

Now struts his little *Highness* ———
With so much beauty, show me any maid
That could resist this charming *Ganymede*.
Then cut him out a world of work,
To conquer Spain, and quell the Turk:
Foretell his empire crowned with bays,
And golden times and halcyon days,
And swear his line shall reign the nation
For ever—till the conflagration.
But now it comes into my mind
We left a little *Duke* behind:
A Cupid in his face and size,
And only wants to want his eyes.”

Addison, who, in his ingenious allegorical verses addressed to Sir Godfrey Kneller on his picture of King George I., could prate of the king's *godlike form*, and thus conclude his poem,

“ This wonder of the sculptor's hand
Produced, his art was at a stand:
For who would hope new fame to raise,
Or risk his well-established praise,
That his high genius to approve,
Had drawn a *George*, or carved a *Jove*,”

takes the following courtier-like view of the *perspective* prospect of

a numerous and increasing family of royal children : In casting our eyes over the nation's darlings, as they are placed according to their ages and heights, and turning in our thoughts the probability of their number being doubled or trebled, Addison bids us loyally to reflect that, " We are like men entertained with the view of a spacious landscape, where the eye passes over one pleasing prospect into another, till the sight is lost by degrees in a succession of delightful objects, and leaves us in the persuasion that there remain still more behind."

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